CASES ON RESTRAINT OF TRADE II

WYMAN

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BY

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PART II

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CHAPTER II. — COMBINATION.

SECTION I. — RESTRICTION OF COMPETITION.

A. Restraint of Trade.

(1) *Principal.*

ANONYMOUS.

In the Common Pleas, 1415.

[*Reported Y. B. 2 Hen. V. fo. 5, pl. 26.*]

Writ of debt was brought on an obligation of one John Dier, in which the defendant declared upon a certain indenture which he set forth, on condition that if the defendant did not use his art of dier's craft within the town where the plaintiff, etc., for a certain time, to wit, half a year, the obligation should lose all force, etc., and said that he did not use his art of dier's craft in the time limited, which he averred and prayed judgment, etc.

Hull. In my opinion you might have demurred upon him, that the obligation is void, for that the obligation is against the common law, and by God, if the plaintiff were here, he should go to prison until he paid a fine to the king.

Strange. We aver that the defendant has used his art for a time, to wit vii days, within the time limited by the condition, and the others to the contrary.

CLAYGATE *v.* BATCHELOR.

In the Common Pleas, 1601.

[*Reported Owen*, 143.]

In debt upon a Bond of thirty pound, the Condition was, that if Robert Batchelor, son to the Defendant, did use the Trade of Haberdasher as Journeyman servant, or Apprentice, or as a Master, within the County of Kent, within the Cities of Canterbury and Rochester, within four years after the date, that then, if he pay twenty pound upon request, the Obligation to be voyd. And all the Justices agreed that the condition was against Law, and then all is voyd, for it is against the liberty of a Free-man, and against the Statute of Magna Carta cap. 20, and is against the Commonwealth. 2 H. 5 & 5. And Anderson said, that he might as well bind himself, that he would not go to Church. And Judgment was given against the Plaintiff.

CHAPIN *v.* BROWN BROS.

IN THE SUPREME COURT OF IOWA, 1891.

[*Reported* 83 *Ia.* 156.[1]]

ACTION at law to recover one hundred and fifty dollars damages, and for an injunction to restrain the defendants from pursuing the business of buying butter at Storm Lake, in Buena Vista county. Application for a temporary injunction was made to the judge in vacation. The defendants appeared and filed objections to the granting of the writ. The objections were sustained, and the plaintiffs appeal.

ROTHROCK, J. It appears to us that the decision of the district court is manifestly right upon the question that the agreement is against public policy. It plainly tends to monopolize the butter trade at Storm Lake, and destroy competition in that business. It is not necessary that the enforcement of the agreement would actually create a monopoly in order to render it invalid, and surely where all the dealers in a commodity in a certain locality agree to quit the business, and the plaintiffs are installed as the only dealers in that line, the tendency is, for a time at least, to destroy competition, and leave the plaintiffs as the only dealers in that species of property in that locality. Such contracts cannot be enforced. *Affirmed.*

TOBY AND ANOTHER *v.* MAJOR.

IN THE CHANCERY DIVISION, 1899.

[*Reported* 43 *Sol. Jour.* 778.]

MOTION for injunction.

DARLING, J., said: An Englishman set up business at Notting Hill. That did not suit a number of German bakers. What they in substance did was to find a man with £75, and they paid the defendant that sum and another £25 to give up his business. It was said on behalf of the plaintiffs that what the association did was to buy the business of the defendant for £100 and resell it for £75. He did not think that was so; and thought that what they did was against public policy. It was said that notwithstanding that the plaintiffs were entitled to an injunction; he thought that question might better be decided at the trial. The injunction must be refused with costs.

[1] Only one point is printed. — ED.

MURRAY *v.* VANDERBILT.

In the Supreme Court of New York, 1863.

[*Reported* 39 *Barb.* 140.[1]]

This was an action for an accounting by the defendant. The facts appear in the opinion of the court.

Ingraham, J. The plaintiff, as receiver, claims to recover against the defendant for moneys received by him from the Pacific Mail Steamship Company for a subsidy agreed to be paid by that company for laying up the steamers belonging to the Transit Company. As to the terms of the contract or agreement there is but little if any difference between the parties. It was a verbal agreement made between Mr. Vanderbilt on the one side and Mr. Aspinwall on the other. They at the time were presidents of the two companies. Mr. Aspinwall says he proposed to pay either to Mr. Vanderbilt or to his company a certain sum per trip for each trip that the boats of the Pacific Mail Steamship Company ran without opposition, which was agreed to by the defendant. The amount to be paid was $10,000 per trip. This is the substance of the agreement, as stated by Mr. Chauncey, who was present. Mr. Vanderbilt states the terms of the contract to be in substance the same, except that the Pacific Mail Steamship Company was to pay $40,000 per month, on condition that they should have no opposition; making the payment per month instead of per trip. The point of difference between the plaintiff's witnesses and the defendant is, as to the party who was to receive this payment.

Without specially recapitulating the testimony in reference to this part of the case, I think the whole of the evidence, taken together, shows the intent of the parties making the agreement at that time was, that the subsidy should go to the benefit of the Transit Company. The testimony of Mr. Aspinwall shows that such was his understanding of the agreement. This is confirmed by Mr. Chauncey, who was present.

An objection is taken to this claim on the ground that the contract was immoral and could not be enforced; that being in restraint of trade and commerce, the court should not sustain it, but should leave the parties as the law found them, both being *in pari delicto*. That this rule would apply if the action was brought by the plaintiff or by Vanderbilt against the Pacific Mail Steamship Company, I have no doubt. The law would not enforce such a contract against the delinquent party; or if the money had been paid, the law would not enable the party paying to recover it back, but would leave them as they placed themselves in carrying out the agreement; viz., to act upon it as a mere honorary arrangement among themselves with which the law could have nothing to do. But does such a rule apply to a prin-

[1] Only one item is printed. — Ed.

8 Mass. 223

cipal and his agent who has received money for his principal on such an agreement? The money has been paid to an agent for his principal by a party who could not have been compelled to make such payment. But having been paid voluntarily, it becomes the property of the principal in the agent's hands for which he should account; he has no right to refuse payment to his principal because his principal had not a legal claim for the money on the agreement.

For the purpose of taking such account a reference is ordered, and all further directions are reserved until the coming in of the report.

TUSCALOOSA ICE CO. *v.* WILLIAMS.

IN THE SUPREME COURT OF ALABAMA, 1900.

[*Reported* 127 *Ala.* 110.[1]]

[THE complaint recited that by the terms of an agreement between the Ice Company and Williams the first party was to pay $875, and the second party was to shut down his ice machine for five years. The plea averred that the same was void as in restraint of trade. Demurrer.]

MCCLELLAN, J. This contract is clearly bad. It tends to injure the public by stifling competition and creating a monopoly. Its manifest purposes even upon its face, and certainly when taken in connection with the facts averred in the plea, was to secure to the covenantee a monopoly in the production and sale of ice in the town of Tuscaloosa and vicinity, and such is its operation and effect. Indeed, on the allegations of the plea it was even worse than this, for one of its results was to reduce the available supply of ice below the needs of the locality affected by it. It thus operated not only to put it in the power of the covenantee to arbitrarily fix prices, but directly and necessarily to create a partial ice famine upon which the defendant company could batten and fatten at its own sweet will. But aside from this, the monopoly itself, the putting in the power of the covenantee to control the production and to fix its own prices whatever the production, is quite sufficient for the utter condemnation of the contract as being against public policy. The purpose to create a monopoly is obvious; it is well-nigh expressed in the writing itself. That a monopoly was created is clear beyond all dispute. That ends the case against the validity of the covenant. Nothing more need be said. All that has been said for the appellee against that conclusion is vain and useless. Given the purpose and effect of this contract, its condemnation would follow even had the plaintiff as a part of the transaction sold his ice plant to the defendant; and the limitation of the covenant as to time and place, though reasonable in itself, is of no redeeming importance or efficacy whatever. So

[1] This case is abridged. — ED.

of the suggestion that no monopoly was created because the contract itself evidences a contemplation that "unknown parties" might come to Tuscaloosa, establish an ice factory and enter upon the production and sale of ice in competition with the covenantee. There was no other such plant there at the time the contract was entered into (it would not have been entered into at all had there been) and it is of no sort of consequence that another might be established, or even that another was in fact established soon after its execution, as soon probably as one could be established after defendant's monopoly had begun to grind. Nor is there the least merit in the suggestion that ice could be brought to Tuscaloosa from other places, and hence that defendant had no monopoly. Even with ordinary commodities a covenant tending to create a monopoly in a given city or to unduly control prices is not relieved by the consideration that its baneful effects may be counteracted in greater or less degree by importations; and the position is exceedingly nude and bald when taken in respect of a commodity like ice or water, the chief cost of which, apart from the plant for its manufacture or collection, is in the transportation to the consumer; and it may be safely said that an ice factory in a town beyond the ordinary reach of delivery wagons from another town has a monopoly of the ice business in that town. And so of the argument that public policy has to do in this connection only with the necessaries of life and that ice is not a commodity of that class. Both the propositions thus asserted, the one of law, the other of fact, are unsound. To say the least it is against public policy to monopolize in this way any commodity of common utility, or of common consumption or use among the people, or even of considerable utility or consumption, whether it be one of the necessaries of life or not; and in the second place, we feel entirely assured of conservatism in declaring that in this latitude, and especially in towns as populous as Tuscaloosa, ice is one of the common necessaries of life. All of the foregoing propositions, sustaining the conclusion that the contract sued on is violative of public policy as stifling competition and promoting monopoly to the manifest injury of the public, are fully supported.

Remanded.

79 Illinois 346
161 Penna State 473

CLARK *v.* NEEDHAM.

IN THE SUPREME COURT OF MICHIGAN, 1901.

[*Reported* 125 *Mich.* 84.]

GRANT, J. These two instruments constitute but one instrument, and must be construed together. Briefly stated, the agreement is this: Plaintiffs, in consideration of $1500, to be paid to them annually, agreed for a period of five years not to manufacture or sell chaplets, except for only one party. Plaintiffs' sales were not limited to the place of manufacture, but extended into other states. The plain object of the agreement was to substantially close this part of plaintiffs' business, and to give defendants a monopoly of it. The parties evidently recognized the invalidity of such a contract, put in plain and unequivocal language, and sought to evade it by these two so-called leases. The arrangement was a bare subterfuge to evade the law. Defendants did not buy out plaintiffs' business, machinery, and plant, or lease them for the purpose of continuing their (plaintiffs') business. The result intended and accomplished was to close that part of plaintiffs' business, to throw their employés out of employment, and to deprive the public of any benefit from the continuance of their business.

The learned counsel for plaintiffs concede the invalidity of those contracts which are entered into for the express purpose of, and result in, closing one's business for the benefit of a rival business, in throwing employés out of employment, and in depriving the public of the benefit of such business. Such contracts tend to destroy competition, and create monopolies, and are void. Plaintiffs, however, seek to avoid the result of this contract on the ground that it is not in general restraint of trade, but is limited as to time and subject-matter. They concede that it is unlimited as to territory, and that the contract, if binding, covers the entire United States.

Any such contract is invalid, whether the restraint be for one year or any number of years, or is unlimited as to time. The agreement to close one part of a business is as much against the policy of the law as a contract to close the entire. The one is as reprehensible as the other. They only differ in degree. Under this contention a party might agree with one person to close one part of his manufactory, and then agree with a second person to close the other part; the two constituting his entire business.

Affirmed.

PRINCIPAL CONTRACT INVALID. — Prugnell *v.* Goff, Allyn, 67; Gunmakers *v.* Fell, Willes, 388; Leighton *v.* Wales, 3 M. & W. 545; Oliver *v.* Gilmore, 52 Fed. 563; Cravens *v.* Carter Crume Co., 92 Fed. 429; Fowle *v.* Parke, 131 U. S. 88; Lumber Co. *v.* Hayes, 76 Cal. 387; Craft *v.* McConoughy, 79 Ill. 346; Harrison *v.* Lockhardt, 25 Ind. 112; Perkins *v.* Lyman, 9 Mass. 521; Presbury *v.* Fisher, 18 Mo. 50; Murray *v.* Vanderbilt, 39 Barb. 140; Good *v.* Daland, 121 N. Y. 1; Grasselli *v.* Lowden, 11 Oh. St. 349; George *v.* Coal Co., 83 Tenn. 455; R. R. *v.* Roberts, 60 Tex. 545; Fairbank *v.* Leary, 40 Wis. 637. — ED.

(2) *Ancillary.*

JELLIET *v.* BROADE.

IN THE COMMON BENCH, 1620.

[*Reported Noy*, 98.]

J. sells goods to B. for £200 and, in consideration of that bargain, B. promises that he will not exercise the trade of a mercer in such a village, etc. But after B. uses it there, and J. brought an action on the case, and resolved by the court that it well lies. For it was a voluntary promise for a good consideration, and is restraint as to a place. Otherwise, if it had been a general restraint, or upon a coaction, or without consideration, as 2 H. 5. 5. 6. Note; also M. 43 and 44 Eliz. C. B. N. S., 3217.

CLERK *v.* COMER.

IN THE KING'S BENCH, 1734.

[*Reported Cas. T. Hardwicke*, 48.]

AN action of debt on articles. The plaintiff taught the defendant his trade on condition that he would not set up within the Bills of Mortality under the penalty of 44*l.* The action was brought in C. B.; breach was assigned. The defendant demurred to the declaration and the plaintiff had judgment. On this, a writ of error was brought in B. R., and judgment was affirmed upon authority of the case of *Chesman and Manby*, affirmed in the House of Lords with costs upon the foundation of the case of *Mitchell* v. *Reynolds*, in each of which it was adjudged that an action would lie for the breach of such articles.

MORRIS *v.* COLMAN.

In Chancery, 1811.

[*Reported* 18 *Ves.* 437.]

Various disputes having arisen among the proprietors of the Theatre in the Haymarket, a bill was filed; praying an execution of the Articles of Agreement, an injunction to restrain Mr. Colman from acting as manager, and a reference to the Master for the appointment of a manager.

An injunction was granted: and a reference directed to the Master to inquire, whether the defendant, Mr. Colman, had performed the duties of manager, and what he was doing and could do in the discharge of those duties. Upon a motion to dissolve the injunction, a question arose upon the validity of a clause in the articles restraining Mr. Colman from writing dramatic pieces for any other theatre, or, as the construction was represented for the plaintiff, giving the Haymarket Theatre a right of preëmption.

The Lord Chancellor [Eldon]. — I cannot perceive any violation of public policy in this provision. The case of trade to which it has been compared, is perfectly distinct. It is well settled upon that principle, that notwithstanding such a covenant, restraining trade in general, a man shall be at liberty to engage in commerce; but that has been broken in upon to the extent of giving effect to covenants restraining trade within particular limits; and, in partnership engagements, a covenant that the partners shall not carry on for their private benefit that particular commercial concern, in which they are jointly engaged, is not only permitted, but is the constant course.

If that is so with regard to trade, it is impossible to maintain that theatrical performers, who act only under a license, and are treated as vagrants if not licensed, may not enter into such engagements. The contract is not unreasonable upon either construction; whether it is, that Mr. Colman shall not write for any other theatre without the license of the proprietors of the Haymarket Theatre, or whether it gives to those proprietors merely a right of preëmption. If Mr. Garrick was now living, would it be unreasonable that he should contract with Mr. Colman to perform only at the Haymarket Theatre, and Mr. Colman with him to write for that theatre alone? Why should they not thus engage for the talents of each other? The ground might be supposed that nothing could be made of the theatre without exhibiting the talents of such a man; and in this instance that he may get more to himself and the other proprietors by this contract than he could by hard bargains at other theatres.

I cannot, therefore, see anything unreasonable in this; on the contrary, it is a contract which all parties may consider as affording the most eligible, if not the only means of making this theatre profitable to them all as proprietors, authors, or in any other character which they are by the contract to hold.

HAYWARD *v.* YOUNG.

In the King's Bench, 1818.

[*Reported* 2 *Chitty*, 407.]

Gaselee moved for the defendant, to set aside a verdict for the plaintiff, in an action on a bond, conditioned not to set up as surgeon or man-midwife in the town of Aylesbury, or within twenty miles; he objected that this bond was void, as in restraint of trade.

Abbott, C. J. May not the business of an apothecary extend for twenty miles, and might not the setting up within that distance be injurious to him? The principle so luminously laid down and commented upon in *Mitchell* v. *Reynolds*, 1 Peere Wms. 181, where Lord C. J. Parker said, that it was quite out of the question to argue it in such a case, is completely applicable to the present.

Judgment for the plaintiff.

ROGERS *v.* DRURY.

In the Chancery Division, 1887.

[*Reported* 57 *L. J. Ch.* 504.]

The parties to this action were medical practitioners. The defendant had sold his practice within a certain radius to the plaintiff. The defendant afterward attended patients who had called him in.

Chitty, J. In this case, the facts are, generally speaking, admitted. Moreover, there is no question as to the validity of the covenant, and all I have to ascertain is its meaning. The defendant says there has been no competition, because there cannot be competition without solicitation, and he also says that competition must be active competition. Neither of these propositions can be sustained. It is important to ascertain what was the object of the covenant. Its object was to protect the practice which had been bought and paid for. I decline to draw a distinction between active and passive competition. The covenant is not to enter into any competition in any way whatever. What I have to do is to give each term in the covenant its full and appropriate meaning, and doing this and bearing in mind the object of the covenant, I think that it is clearly infringed, for it appears to me that the vendor, by coming into the area of the practice, is acting most injuriously towards the plaintiff, and to my mind diminishing the plaintiff's fair chance of obtaining that which he has purchased. The defendant has said that the patients would not have called in the plaintiff under any circumstances. To this it can be answered that there might be circumstances under which it might be important to call in the doctor on the spot, and the skill of the plaintiff is not questioned. The plaintiff is entitled to an order.

19 Pickering 186
20 Maine 276

BISHOP v. KITCHEN.

IN THE QUEEN'S BENCH, 1868.

[*Reported* 38 *L. J. Q. B.* 20.]

THE declaration stated that plaintiff had sold to the defendant his business of commercial traveller in the hop trade, and the plaintiff had undertaken that he would not at any time thereafter solicit orders for hops from any of the customers, or from any of the persons in the district, or *any district whatever*, on consideration of an annuity of £100 for life. Breach, non-payment. Demurrer upon ground of restraint of trade.

Per curiam. The agreement having been executed, and the plaintiff having submitted to the restraint, he is clearly entitled to recover the consideration due in respect to it.

Judgment for the Plaintiff.

BRYSON v. WHITEHEAD.

IN CHANCERY, 1822.

[*Reported* 1 *Sim. & Stu.* 74.]

THIS was a Bill for the Specific Performance of an Agreement, for the sale of the Good-will of a Trade, and of a Secret in Dyeing.

The Plaintiff had for many years carried on the trade of a Dyer in Spitalfields, and had a particular mode of dyeing Bombazeens and Stuffs. None but himself and his Son-in-law, one Portlock, knew the secret of dyeing Stuffs in that mode; and this secret was esteemed of great value.

In December, 1820, Bryson being about to retire from Business, agreed to sell the Good-will of his trade, together with the Plant and Fixtures, to the Defendant, for 1500*l.*, and the exclusive benefit of the Secret for 1000*l.* Heads of the Agreement in writing were signed by both Parties.

The VICE-CHANCELLOR: —

Although the policy of the Law will not permit a general restraint of trade, yet a Trader may sell a Secret of Business, and restrain himself generally from using that Secret. Let the Master, in settling the Deed which is to give effect to this Agreement, introduce a general Covenant to restrain the use of the Secret for Twenty years, and a limited Covenant, in point of locality, as to carrying on the ordinary business of a Dyer, both Parties being willing that the Agreement should be so modified.

The Decree therefore referred it to the Master to settle a proper Deed.

HEATON PENINSULAR BUTTON FASTENER CO. *v.* EUREKA SPECIALTY CO.

IN THE CIRCUIT COURT OF APPEALS, 1896.

[*Reported* 77 *Fed.* 288.[1]]

[PLAINTIFFS attached to their patented button fastener machine a metal label with these words: —

"*Condition of Sale.*

"This machine is sold and purchased to use only with fasteners made by the Peninsular Novelty Company to whom the title to this machine immediately reverts upon violation of this contract of sale."

Bill for injunction against both users and sellers of other staples.]

LURTON, Circuit Judge. This method of licensing their mechanism may or may not result in the engrossment of the market for staples. So long as their invention controls the market for button-fastening appliances, and to the extent that their machines shall supersede other modes of clinching staples, just so long will they be enabled to control the market for staples. Their monopoly in an unpatented article will depend upon the merit of their patented device, and the extent to which other clinching devices are superseded by it. In the last analysis, the invention destroyed the demand for sizes and shapes of staples not adapted to use with the machine of complainant, and the monopoly of the use awarded by the patents destroyed the market for staples fitted for use in complainant's machines. The monopoly in the unpatented staple results as an incident from the monopoly in the use of complainant's invention, and is therefore a legitimate result of the patentee's control over the use of his invention by others. Depending, as such a monopoly would, upon the merits of the invention to which it is a mere incident, it is neither obnoxious to public policy, nor an illegal restraint of trade.

The decree must be reversed and the cause remanded with directions to overrule the demurrers.

ROBBINS *v.* WEBB.

IN THE SUPREME COURT OF ALABAMA, 1880.

[*Reported* 68 *Ala.* 393.]

SOMERVILLE, J. The main question in this case, a solution of which determines the equity of complainants' bill, is, whether the two written instruments, the deed and the bond, which are made

[1] This case is abridged. — ED.

exhibits to the bill, are parts of one and the same contract, and as such, can legally be construed together.

The one is a deed from Gregg to Smith, dated February 26th, 1859, conveying certain land to the latter in fee simple, without condition or limitation.

The other is a penal bond, dated February 19, 1859, reciting that Alexander McLeod had "bought" a certain tract of land from said Gregg, which is shown to be a part of the same lands conveyed to Smith. This bond is signed by both Smith and McLeod as obligors, and binds each of them, their representatives and assigns, "not directly or indirectly to permit or allow a warehouse or place for the shipping or receiving of goods either upon or through said premises," and agreeing to give Gregg "the free and unmolested use of the premises for the delivery of spars and lumber." Gregg was the proprietor of a warehouse, at or near the same landing on the Alabama river, situated on land which, on his decease, descended to the complainants who are his heirs at law.

The appellee, Webb, purchased the land described in the bond from Smith, with full notice of the existence and contents of the bond, and erected thereon a warehouse, and proceeded to carry on the business of shipping and receiving goods. This bill is filed to enjoin him from continuing to engage in such business as warehouseman, in alleged violation of the covenant of his vendor, Smith, not to do so.

The contract in question was not void as against public policy. Contracts restraining the exercise of any trade, profession, or business, are legal when there is a fair and reasonable ground for the restriction, and they are confined to a limited locality, not unreasonably large or extensive. *Mayor* v. *Pattison*, 10 East. 136; 1 Addison on Contr. § 272; *Noble* v. *Bates*, 7 Cow. 307.

A covenant of this character, furthermore, "runs with the land," and the right to enforce it passes to the personal representative, heirs, and assigns of the covenantee. It is also binding on the personal representative, heirs, and assigns of the covenantor, and also upon all purchasers from him with notice of the encumbrance. *Spencer's Case*, 1 Smith Lead. Cases (Hare & Wall.), 140, *note*.

And a court of chancery will, in such a case, restrain by injunction the breach of the conditions or terms of the covenant, asserting jurisdiction by an equity in the nature of specific performance. *Guerand* v. *Dandelet*, 32 Md. 561 (3 Amer. 164); *Kemp* v. *Sober*, 1 Sim. (N. S.) 520; 3 Wait's Act. & Def. 693, § 6.

The amendment proposed to the bill of complaint should have been allowed.

The chancellor erred in sustaining the demurrer and dismissing the bill. His decree is reversed, the injunction reinstated, and the case remanded.

HARVEY v. COOKE AND ANOTHER.

IN THE CHANCERY DIVISION, 1885.

[*Reported* 79 *L. T.* 246.]

CHITTY, J. The plaintiff carried on a business of home and foreign army contractor, and a large part of his business was to supply concentrated meat. The defendants had entered into an agreement with him whereby they covenanted not to carry on a concentrated meat business in Europe, and on the present motion for an injunction against them to restrain them from so doing, contended that the agreement violated the rule against restraint of trade, and was void. *Held*, that considering the nature and extent of the business, the limitation to the continent of Europe was not too wide, and that the agreement was a valid one.

DIAMOND MATCH CO. v. ROEBER.

IN THE COURT OF APPEALS OF NEW YORK, 1887.

[*Reported* 106 *N. Y.* 473.[1]]

ANDREWS, J. Two questions are presented: First. Whether the covenant of the defendant contained in the bill of sale executed by him to the Swift & Courtney & Beecher Company on the 27th day of August, 1880, "that he shall and will not, at any time or times within ninety-nine years, directly or indirectly engage in the manufacture or sale of friction matches (excepting in the capacity of agent or employé of said The Swift & Courtney & Beecher Company), within any of the several States of the United States of America, or in the territories thereof, or within the District of Columbia, excepting and reserving, however, the right to manufacture and sell friction matches in the State of Nevada and in the territory of Montana," is void as being a covenant in restraint of trade; and, second, as to the right of the plaintiff, under the special circumstances, to the equitable remedy by injunction to enforce the performance of the covenant.

It has sometimes been suggested that the doctrine that contracts in general restraint of trade are void is founded in part upon the policy of preventing monopolies, which are opposed to the liberty of the subject, and the granting of which by the king under claim of royal prerogative led to conflicts memorable in English history. But covenants of the character of the one now in question operate simply to prevent the covenantor from engaging in the business which he sells, so as to protect the purchaser in the enjoyment of what he has purchased. To

[1] This case is abridged. — ED.

the extent that the contract prevents the vendor from carrying on the particular trade, it deprives the community of any benefit it might derive from his entering into competition. But the business is open to all others, and there is little danger that the public will suffer harm from lack of persons to engage in a profitable industry. Such contracts do not create monopolies. They confer no special or exclusive privilege. If contracts in general restraint of trade, where the trade is general, are void as tending to monopolies, contracts in partial restraint, where the trade is local, are subject to the same objection, because they deprive the local community of the services of the covenantor in the particular trade or calling, and prevent his becoming a competitor with the covenantee. We are not aware of any rule of law which makes the motive of the covenantee the test of the validity of such a contract. On the contrary we suppose a party may legally purchase the trade and business of another for the very purpose of preventing competition, and the validity of the contract, if supported by a consideration, will depend upon its reasonableness as between the parties. Combinations between producers to limit production and to enhance prices are or may be unlawful, but they stand on a different footing.

The defendant entered into the covenant as a consideration in part of the purchase of his property by the Swift & Courtney & Beecher Company, presumably because he considered it for his advantage to make the sale. He realized a large sum in money, and on the completion of the transaction became interested as a stockholder in the very business which he had sold. We are of opinion that the covenant, being supported by a good consideration, and constituting a partial and not a general restraint, and being, in view of the circumstances disclosed, reasonable, is valid and not void.

Judgment affirmed.

NORDENFELT v. MAXIM-NORDENFELT CO.

In the House of Lords, 1894.

[*Reported* 1894, *A. C.* 535.[1]]

[The plaintiff was formerly engaged in the manufacture and sale of guns and ammunition. He sold his plant, business, patents, and good will to the defendant, a limited company. As part of the transfer he agreed not to engage in the same business anywhere for a period of twenty-five years. Action to enforce this covenant by injunction.]

Lord Morris. My Lords, I entirely concur in the judgment and the reasons for it given by the Lord Chancellor. But I desire to express my opinion that, without going through the numerous cases which have been so exhaustively dealt with in the Court of Appeal

[1] Only the opinion of Lord Morris is printed. — Ed.]

42 New Jersey Equity 185
2 Manning & Granger 20
39 Chancery Ed. 520 (Div.)
[illegible] 498

and by your Lordships, the weight of authority up to the present time is with the proposition that general restraints of trade are necessarily void. It appears, however, to me that the time for a new departure has arisen and that it should be now authoritatively decided that there should be no difference in the legal considerations which would invalidate an agreement whether in general or partial restraint of trading. These considerations, I consider, are whether the restraint is reasonable and is not against the public interest. In olden times all restraints of trading were considered *prima facie* void. An exception was introduced when the agreement to restrain from trading was only from trading in a particular place and upon reasonable consideration, leaving still invalid agreements to restrain trading at all. Such a general restraint was in the then state of things considered to be of no benefit even to the covenantee himself; but we have now reached a period when it may be said that science and invention have almost annihilated both time and space. Consequently there should no longer exist any cast-iron rule making void any agreement not to carry on a trade anywhere. The generality of time or space must always be a most important factor in the consideration of reasonableness though not *per se* a decisive test. If the consideration of reasonableness or of public interest is the rule, the appellant in my opinion has no case. The portion of his business, which consisted of manufacturing guns and gunpowder explosives, was one which would almost altogether be with Governments, foreign as well as at home, and wherever carried on would necessarily be in injurious competition with the respondents; nor does the substitution of a company for the appellant in the manufacture of guns and ammunition appear to me to injuriously affect the public interest.

Order appealed from affirmed and appeal dismissed.

ANCILLARY CONTRACT VALID. — Mitchell *v.* Reynolds, 1 P. Wms. 181; Homer *v.* Ashford, 3 Bing. 322; Hitchcock *v.* Coker, 6 A. & E. 438; Ward *v.* Byrne, 5 M. & W. 548; Mallan *v.* May, 11 M. & W. 633; Tallis *v.* Tallis, 1 E. & B. 391; Avery *v.* Langford, Kay, 663; Printing Co. *v.* Sampson, L. R. 19 Eq. 462; Rousillon *v.* Rousillon, 14 Ch. D. 351; Davies *v.* Davies, 36 Ch. D. 359; Baker *v.* Hedgecock, 39 Ch. D. 520; Mills *v.* Dunham, 1891, 1 Ch. 576; Underwood *v.* Baker, 1899, 1 Ch. 300; Abergario Co. *v.* Holmes, 1900, 1 Ch. 188; Carter *v.* Allrug, 43 Fed. 188; Navigation Co. *v.* Winsor, 20 Wall. 64; Moore Co. *v.* Towns Co., 82 Ala. 206; Webster *v.* Williams, 62 Ark. 101; S. S. Co. *v.* Wright, 6 Cal. 258; Cook *v.* Johnson, 47 Conn. 175; Bullock *v.* Johnson, 110 Ga. 486; Lawzil *v.* Mfg. Co., 184 Ill. 326; Martin *v.* Murphy, 129 Ind. 464; Hedge *v.* Lowe, 47 Ia. 147; Pohlman *v.* Dawson, 63 Kan. 471; Davis *v.* Brown, 98 Ky. 475; Whitney *v.* Slayton, 20 Me. 276; Guerand *v.* Dandelet, 32 Md. 561; Bishop *v.* Palmer, 148 Mass. 346; Beal *v.* Chase, 31 Mich. 490; Gill *v.* Ferris, 82 Mo. 526; Perkins *v.* Clay, 54 N. H. 518; Mandeville *v.* Harmon, 42 N. J. Eq. 185; Curtis *v.* Gokey, 68 N. Y. 300; Cowen *v.* Fairbrother, 118 N. C. 106; Lufkin Co. *v.* Frengeli, 59 Oh. St. 117; Paxson's Appeal, 106 Pa. 429; Herreschoff *v.* Boutineau, 17 R. I. 1; Machine Works *v.* Perry, 71 Wis. 495; Transportation Co. *v.* Pipe Line Co., 22 W. Va. 600. — ED.

B. Control of the Market.

(1) *Concentration.*

KING *v.* MAYNARD.

In the King's Bench, 1632.

[*Reported Cro. Car.* 231.]

Information for engrossing one hundred bushels of salt to sell again, contrary to the form of the statute of 5 Edw. 6, c. 14. Upon the declaration it was demurred.

Noy and *Mason* argued that this information is not maintainable. First, because engrossing is no offence in itself, nor forestalling and regrating were not in themselves offences punishable before the statute; nor is engrossing in itself unlawful, but by consequence, or by reason of the things bought and made dearer, which ought to be shown in the indictment or information.

Secondly, because it is not any victual within the words or intent of the statute; for it is not victual, but only condimentum, and for preservation of victual: and he cited a record in Easter Term, 18 Eliz. adjudged, that buying of barley and converting it into malt, and selling it, was no offence punishable in a mayor, who sold it, nor made him to be a victualler (the mayor being prohibited to sell victuals). And 20 Jac. 1, adjudged likewise, that hops were not victuals within the statute. And Pas. 15, Jac. 1, Rot. 36, adjudged, that buying of apples to sell again was not within the statute. And where it is mentioned, 13 Eliz. c. 25, that the 5 Edw. 6, 14, doth not extend to buying of oils, wine, and other merchandise except fish and salt, it is to be intended that was not in the point of engrossing, but for forestalling and regrating, which is prohibited; and it would be a great inconvenience if salt should be within the law to be victuals, to be prohibited to be engrossed; for then it should extend to those that carry salt in wains to be sold, and would enforce every one to buy salt by the bushel or peck, at ships or salt pits, which the law never intended; but the law intends those things which are sold in great quantity, usually at every market in every county, as corn, cattle, butter, cheese, etc., but if any engross all the salt with an intent to sell it at his own price, and at unreasonable prices, he may be thereof indicted as for an offence at the common law; and if it be found he is finable, as appears by a record in Easter Term, the 43 Edw. 3, Roll 19, shown in court. Whereupon it was adjourned.

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INDIA BAGGING ASSOCIATION *v.* KOCK.

IN THE SUPREME COURT OF LOUISIANA, 1859.

[*Reported* 14 *La. Ann.* 168.]

BUCHANAN, J. On the 7th August, 1856, an association of eight commercial firms in New Orleans, holders of 7410 bales of India cotton bagging, was formed into what they called a copartnership for the sale of India bagging, but which ought rather to be called a partnership to prevent the sale of India bagging; for, by their articles of association, the subscribers bound themselves for the term of three months not to sell any bagging, nor to offer to sell any, except with the consent of the majority of them, expressed at a meeting, under the penalty of ten dollars for every bale so sold or offered to be sold. It must be observed that the 7410 bales of India bagging held by the members of this association in unequal proportions did not cease to be the property of the individual members. It is indeed said, in the fifth article of association, that the bagging is accepted by the association for the benefit of its members *individually and separately*, at the rate of 20 cents per yard. But this clause means nothing if it does not mean that each member of the association accepts his own stock of bagging at that price. For at the end of three months each member was to resume the uncontrolled disposal of his own stock of bagging; and it is admitted by plaintiffs that two of the members, holders of 2605 bales, withdrew from the association before the expiration of the limited term of three months.

This suit is brought against one of the members by the manager of this association, for the recovery of a penalty of seven thousand four hundred dollars, for having sold seven hundred and forty bales of bagging, in contravention of the articles of association.

Defendant denies having sold as alleged, and claims in reconvention, of plaintiffs, three thousand dollars and upwards, for so much paid them for sales made by him in excess of twenty cents per yard.

From the argument, the whole dispute seems to be about a lot of 101 bales of bagging sold on the 7th November, 1856; one party asserting that date to have been within the term of the association, while the other party contends that its term expired on the 6th November.

This is a case which ought never to have come before us. The agreement between the parties was palpably and unequivocally a combination in restraint of trade, and to enhance the price in the market of an article of primary necessity to cotton planters. Such combinations are contrary to public order, and cannot be enforced in a court of justice. C. C. 1889, 1887; Merlin, Rep. de Jurisp., verbo Monopole; Blackstone's Comm., book 4, chap. 12, §§ 8 and 9; Chitty on Contracts, edition 1855, p. 678; 1st Smith's Leading Cases, 367, 381;

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French Penal Code, Art. 419; Pardessus, Droit Comm. vol. 1, p. 265; *Lang* v. *Weeks*, 2 Ohio Repts. N. S. 519; *Thomas* v. *Tiles*, 3 Ohio, 274.

It is, therefore, adjudged and decreed that the judgment of the district court be reversed, and that this suit be dismissed, at costs of plaintiff in both courts.

Cole, J., recused himself in this case.

ARNOT *v.* PITTSTON AND ELMIRA COAL CO.

In the Court of Appeals of New York, 1877.

[*Reported* 68 *N. Y.* 558.[1]]

Rapallo, J. The Butler Colliery Company was a Pennsylvania corporation, engaged in mining and vending coal, at or near Pittston, Pennsylvania. The defendant was also a Pennsylvania corporation, engaged in the same business, but in addition had a coal depot at Elmira, New York, where it was largely engaged in vending anthracite coal, the product of the Pittston mines, and in distributing it, by canal and railway, from Elmira, to dealers and consumers, through a very large extent of country north and west of that point. Elmira was connected with Pittston by canal, and was the chief market for coal in western New York, and prices of coal were there established for the extensive district before mentioned.

The purpose of the defendant in making the contracts in question (by which the Butler company agreed not to sell coal to any other party than the Elmira company to come north of the state line during the continuance of the agreement) was so to control the shipment and supply of coal for the Elmira market as to maintain an unnaturally high price of coal in that market, and to prevent competition in the sale of coal therein, and, but for that purpose, the defendant would not have entered into the contract in question with the Butler Colliery Company. Of all these facts the Butler company had notice at the time of making the agreement.

Every producer or vender of coal or other commodity has the right to use all legitimate efforts to obtain the best price for the article in which he deals. But when he endeavors to artificially enhance prices by suppressing or keeping out of market the product of others, and to accomplish that purpose by means of contracts binding them to withhold their supply, such arrangements are even more mischievous than combinations not to sell under an agreed price. Combinations of that character have been held to be against public policy and illegal. If they should be sustained, the prices of articles of pure necessity, such as coal, flour, and other indispensable commodities,

[1] This case is abridged. — Ed.

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might be artificially raised to a ruinous extent far exceeding any naturally resulting from the proportion between supply and demand. No illustration of the mischief of such contracts is perhaps more apt than a monopoly of anthracite coal, the region of the production of which is known to be limited. Parties entering into contracts of this description must depend upon each other for their execution, and cannot derive any assistance from the courts.

Judgment reversed.

PACIFIC FACTOR CO. *v.* ADLER.

IN THE SUPREME COURT OF CALIFORNIA, 1891.

[*Reported* 90 *Cal.* 110.[1]]

[DECLARATION: Defendant agreed to deliver to plaintiff company or their order, whatever number of grain bags up to 187,500 the said company should call on him to deliver until Jan. 1, 1889, on payment to him of 7½ cents for each bag; and defendant agreed not to sell to any one other than the plaintiff. Defence: that the plaintiff entered into contracts with other holders of grain bags in all respects similar to the contract made with the defendant to the amount of 30,000,000 bags with intent to monopolize the market. Motion for nonsuit.]

GAROUTTE, J. While it is clear that public policy favors the utmost freedom of contracts within the limits of the law, and requires that business transactions should not be fettered by unnecessary restrictions, yet agreements in restraint of competition, that threaten the public good, entered into with the object and view of controlling, and if necessary suppressing, the supply, and thereby enhancing the price of articles of actual necessity, that embrace in their evil effects all the territory and practically all the people of this great State, become a grave menace to the best interests of the Commonwealth, and therefore are opposed to sound public policy. The entire number of bags in the State on the sixteenth day of May, 1888, and which would arrive prior to January 1, 1889, amounted to forty-two millions. The annual demand for bags was thirty-two millions. The plaintiff entered into this "scheme" or "plan" to obtain the control of these forty-two million bags, and in pursuance of said plan by contract did actually secure the control of thirty millions of these bags from the owners and holders thereof.

The plaintiff did not purchase the bags; at the same time, by the rigor of its contract, it prevented the owners from selling them.

It is clear this "scheme" or "plan" was devised, and these contracts entered into, for the purpose of removing all competition, and thereby compelling the farmers to purchase bags from plaintiff, at a price in excess of their real value.

[1] This case is abridged. — ED.

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Plaintiff controlled three fourths of all the bags which were in the State, or which would arrive within the ensuing six months. It held the bag market in its hands, for competition was gone, and the price demanded must be paid. These agreements were not entered into for the purpose of aggregating capital, nor for greater facilities in the conducting of their business, nor for the protection of themselves by a reasonable restraint upon active competitors, but for the purpose of regulating, controlling, and withholding the supply of bags, and thereby to take an unjust advantage of the farmers' necessities, by disposing of the fruits of its unlawful labors at an unreasonable advance in price. *Nonsuit affirmed.*

CENTRAL OHIO SALT CO. *v.* GUTHRIE.

In the Supreme Court of Ohio, 1880.

[*Reported* 35 *Oh. St.* 666.]

McIlvaine, C. J. The only questions made in the argument of this case relate to the validity of the contract of association. No objection has been made, in this court, or the courts below, as to the nature of the relief sought by the cross-petition of defendant, and that question has not been considered. That all contracts in partial restraint of trade are not void as against public policy, is too well settled to be gainsaid; while, on the other hand, it is as fully established, as a general rule, that contracts in general restraint of trade are against public policy, and therefore absolutely void. Upon the authorities, however, the line between such as are void and those that are binding is not very clearly defined.

Public policy, unquestionably, favors competition in trade, to the end that its commodities may be afforded to the consumer as cheaply as possible, and is opposed to monopolies, which tend to advance market prices, to the injury of the general public.

We think the contract before us should not be enforced. By it all the salt manufacturers (with one or two exceptions) in a large salt-producing territory, and whose aggregate annual product is about 140,000 barrels, have combined for the expressed purpose of regulating the "price and grade of salt." A board of directors is chosen. All salt made or owned by the members, as soon as packed into barrels, is placed under the control of the directors. "The manner and time of receiving and distributing salt shall be under the control of the directory." "Each member of the association binds himself to sell salt only at retail, and then only to actual consumers, at the place of manufacture, and at such prices as may be fixed by the directors from time to time." The directors make monthly reports of sales, and pay over the proceeds to the members, in proportion to the amount of salt received from each.

The clear tendency of such an agreement is to establish a monopoly, and to destroy competition in trade, and for that reason, on grounds of public policy, courts will not aid in its enforcement. It is no answer to say that competition in the salt trade was not in fact destroyed, or that the price of the commodity was not unreasonably advanced. Courts will not stop to inquire as to the degree of injury inflicted upon the public; it is enough to know that the inevitable tendency of such contracts is injurious to the public.

Nor is this agreement within the principle which permits a person to bind himself not to engage in trade at a particular place. Here the restraint was general. A member of this association, under this agreement, could not engage in the traffic at any place during the life of the association, except only to retail to actual consumers, at the place of manufacture, and then only from salt in bulk, and at the price named by the company.

It is also claimed, on behalf of the plaintiff, that this agreement does not affect the right of the members to continue the industry in which they are engaged without restraint; that the company cannot control or limit the quantity of salt to be manufactured, and, therefore, the contract does not injuriously affect the interests of labor. We think that the provision that "the manner and time of receiving and distributing salt shall be under the control of the directory," confers upon the company ample power to embarrass the freedom of the members as to the quantity of salt which they might wish to manufacture. There is no agreement that the company will receive all the salt manufactured, and at the time when it may be ready for sale.

On the whole case, we are clearly of opinion that this agreement is void as against public policy.

Judgment affirmed.

URMSTON *v.* WHITELEGG BROTHERS.

IN THE QUEEN'S BENCH DIVISION, 1890.

[*Reported* 63 *L. T. N. S.* 455.]

THE action was brought by the plaintiff as treasurer of the Bolton Mineral Water Manufacturers' Association, of which the defendants were members, for a penalty incurred under the rules. By the rules, which recited that the object of the association was to maintain the price of mineral waters, the members bound themselves not to sell at a less price than 9*d.* per dozen bottles. The defendants wished to retire from the association and commenced selling mineral waters at 8*d.* per dozen bottles.

DAY, J. The only objection is whether the agreement can be enforced as between the members of the association themselves. It is

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said it is bad as being in restraint of trade. If a contract for raising prices against the public is a contract in restraint of trade, this is undoubtedly such a contract. During the last hundred years great changes have taken place in the views of the public, of the legislature, and therefore of the judges on the matter, and many old-fashioned offences have disappeared; but the rule still obtains that combination for the mere purpose of raising prices is not enforceable in a court of law. It may be said that other persons might come and set up business in opposition to the members of this association; but that does not alter the fact that the whole gist and object of the arrangement was to raise the price of soda water without any legitimate consideration whatever. It is a mere scheme for putting into the pockets of the Bolton manufacturers the money extracted from soda water consumers; it cannot be enforced against the defendant.

Appeal allowed.

MILWAUKEE MASONS & BUILDERS' ASSOCIATION *v.* NIEZEROWSKI.

IN THE SUPREME COURT OF WISCONSIN, 1897.

[*Reported* 95 *Wis.* 129.[1]]

THIS action was brought to recover the sum of $2289, claimed as a balance due upon a promissory note for $4266, given by the defendant to the plaintiff corporation by the name and style of the Masons & Builders' Association, payable one year and three months after date. The defence was that the note was without legal consideration, and void; that the pretended consideration was contrary to public policy and good morals, and that the note was given by and secured from the defendant, who was a member of the said association, pursuant to a secret combination and confederation of the plaintiff and its members to exact of and from citizens of Milwaukee, Wisconsin, desiring to erect and construct buildings, a sum equal to six per cent. in excess of the actual cost and value of the work to be done, and by secret means to prevent and suppress competition in bidding for such work; that the note in question was given and received for the purpose and as a means of carrying into effect such alleged unlawful combination. There was practically no dispute as to the facts, and at the close of the evidence the court directed a verdict for the defendant. From a judgment thereon against the plaintiff for costs, plaintiff appealed.

PINNEY, J. The combination in question is contrary to public policy, and strikes at the interests of those of the public desiring to build, and between whom and the association or the members thereof there exist no contract relations; and it is not distinguishable in principle from the case of *Hilton* v. *Eckersley*, 6 El. & Bl. 47, 64, 65.

[1] This case is abridged. — ED.

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While all reasonable stipulations and means to protect labor or trade are laudable, we must hold that the means here sought to be employed are such as the law will not sanction. We must consider what may be done under such an agreement, and the result which it will necessarily produce. As already pointed out, the operation of this combination, under its private by-laws, is to suppress free and fair competition in bidding for contracts, and by delusive and deceptive means members of the association are enabled to exact from owners a higher price for buildings than they would otherwise have to pay. In the matter of changes or additional work, *all* competition by other members of the association is prohibited, unless the amount exceeds the original contract price. And as the membership of the association embraces nearly six sevenths of the mason builders in Milwaukee, the combination not only tends to suppress competition, but operates most unjustly towards builders not members of the association. The restraint thus imposed on the trade is neither fair nor reasonable.

Judgment affirmed.

TEXAS STANDARD OIL CO. *v.* ADOUE.

IN THE SUPREME COURT OF TEXAS, 1892.

[*Reported* 83 *Texas*, 650.[1]]

THIS suit was instituted by the appellants against the appellees, as defendants below, to recover the guaranteed net prices offered to the owners of "the four mills" (represented by appellees) for all of the products of said mills, as well as for the costs and expenses of production, in consideration of a strict performance upon their part of all of the "covenants" in the contract hereinafter described, and which is made the basis of this action. At the time of entering into said agreement the parties thereto were independent dealers in and purchasers of cotton seed and seed cotton, and engaged separately in the business of manufacturing therefrom "oil, oil cake, and other products of cotton and cotton seed," in various cities in the State of Texas.

MARR, Judge. It will be seen that the Howard Company was given almost an unrestricted field to obtain the raw material for its mills, and the exclusive right to control, free from the competition of the owners of the "four mills" (who had no doubt up to that time been its rivals), not only the sales and ruling prices of the products of its own mills (which are not disturbed in this respect), but also "the entire yield" of the mills of the other parties to the contract. It was thus enabled by the confederation of all the parties to dictate at will the prices at which the public must buy (if at all) the oils or other products of any of the mills. If both of the parties had entered a

[1] This case is abridged. — ED.

market open to both under the contract, in order to purchase the raw materials, they could not have competed, for no competition was contemplated, and all freedom of action in this particular was forestalled by arbitrary regulations of the prices to be paid, which must be observed. In the markets assigned to each, they are confronted by the same barrier, and the party cannot buy at all if the market price at that point happens to be greater than the contract price; or if the price prevailing there should *even be below* the contract price, still the party could not avail himself of this advantage without first obtaining, if he *could*, the consent of the other parties. In other words, neither the parties nor the producers of the raw material are to have the benefit of but *one* price, which has been definitely fixed in advance. These things, as it seems to us, are well calculated to affect the interests of the public detrimentally, and would doubtless have been deemed by the parties as injurious to their own interests had they been contemplating a lawful enterprise. These restrictions, however, were instituted in this instance not for the purpose of legitimate profits nor to afford only a fair protection to all of the parties, but as suitable means for preventing all competition.

Demurrer sustained.

CUMMINGS *v.* UNION BLUE STONE CO.

In the Court of Appeals of New York, 1900.

[*Reported* 164 *N. Y.* 401.[1]]

The evidence was to the effect that in 1887 the plaintiff and fourteen other persons were the producers of nearly the whole product of Hudson river blue stone, and of at least ninety per centum of the whole amount of such stone sold in the New York market to customers in various states east of the Mississippi river; that their yearly sales amounted to upwards of $1,500,000; that owing to competition among themselves their profits had for some time been practically nominal; that with the intent to increase their profits, and to secure to each of said producers such part of the sales as his usual production bore to the whole production, they entered into an agreement bearing date the 21st day of February, 1887, with the defendant, the Union Blue Stone Company, and thereby agreed that the said company should act as their sales agent of all the marketable blue stone, manufactured and unmanufactured, which the market would take for the six years from that date at prices to be fixed by the Blue Stone Association, composed of the said producers, and to apportion the sales among the producers according to a schedule set forth in the contract, and to sell for no other parties, the producers agreeing to sell no stone except through such agent, and, acting as the Blue Stone Association, to fix the prices,

[1] This case is abridged. — Ed.

and each to furnish, upon the request of the sales agent, his quota of stone as apportioned. This contract was observed by the parties for about three years.

LANDON, J. The plaintiff urges that it was a question of fact for the jury, and not of law for the court, whether the contract was simply to secure reasonable prices, or to extort from the public unreasonable prices. It may be conceded that one of its purposes was to enable the parties to obtain reasonable prices, but it gave them the power to fix arbitrary and unreasonable prices. The scope of the contract, and not the possible self-restraint of the parties to it, is the test of its validity. They could raise prices to what they supposed the market would bear, and as they expected to supply nearly the entire demand of the market, the temptation to extortion was unusually great.

The parties to this contract controlled ninety per centum of a total product of about $2,000,000 in value, marketed in New York city. Other kinds of stone were in competition with it, but it is plain that the customer who preferred this stone would be restricted in his reasonable rights, if constrained by a monopoly to pay an exorbitant price for it or to accept another kind which he did not want.

The uncontradicted evidence left it clear that this contract was void for the reasons stated, and the trial court was right in so holding as a matter of law.

CONCENTRATION ILLEGAL. — King *v.* Waddington, 1 East, 143; Hilton *v.* Eckersley, 6 E. & B. 47; Cousins *v.* Smith, 13 Ves. 542; Ontario Co. *v.* Merchants' Co., 18 Gr. Ch. 540; U. S. *v.* Jellico Co., 46 Fed. 342; U. S. *v.* Nelson, 52 Fed. 646; Lowry *v.* Tile Ass'n, 98 Fed. 817; U. S. *v.* Fuel Co., 105 Fed. 93; Addystone Pipe Co. *v.* U. S., 175 U. S. 211; Mill Co. *v.* Hayes, 76 Cal. 387; Moore *v.* Bennett, 140 Ill. 69; Houston *v.* Kentlinger, 91 Ky. 333; Fabacker *v.* Bryant, 46 La. Ann. 820; State *v.* Fireman's Ass'n, 152 Mo. 44; Bingham *v.* Brands, 77 N. W. 940; Cohen *v.* Envelope Co., 166 N. Y. 292; Emery *v.* Candle Co., 47 Oh. St. 320; Morris Coal Co. *v.* Barclay Co., 68 Pa. St. 173; Nester *v.* Brewing Co., 161 Pa. St. 480; Oakdale Co. *v.* Garst, 18 R. I. 484; Mallory *v.* Oil Works, 86 Tenn. 598; Fuqua *v.* Pabst Co., 90 Tex. 298; Richards *v.* Desk Co., 87 Wis. 503. — ED.

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(2) *Partition.*

FREEMANTLE *v.* SILK-THROWSTERS.

IN THE KING'S BENCH, 1669.

[*Reported* 1 *Lev.* 229.]

THIS case was referred by the Privy Council to be tried, whether a by-law made by the Company of Silk-Throwsters, that none of that company should have above such a number of spindles in one week, be a good by-law or not? And, after verdict for the plaintiff on a trial of the fact, it was moved, in arrest of judgment, that it, being a by-law in restraint of trade, and founded on their charter of incorporation, with power to make by-laws, and not on any custom, was a monopoly, and void. To which it was answered and resolved by the whole court, that this is not a monopoly, but a restraint of a monopoly, that none might engross the whole trade; being rather to provide for an equality of trade, according to what is convenient and good; and they gave judgment for the plaintiff.

KIRKMAN *v.* SHAWCROSS.

IN THE KING'S BENCH, 1794.

[*Reported* 6 *T. R.* 14.[1]]

AT a meeting of the dyers, dressers, whisters, printers, and calenderers of Manchester, and the neighborhood, held at Manchester in April, 1788, certain resolutions were adopted in a writing, signed, sealed, and delivered amongst others, by the defendant, stating that "whereas a doubt had arisen whether dyers, dressers, bleachers, whisters, printers, or calenderers had a right to detain goods delivered to them, not only till payments were made for the work and labor performed upon the particular goods detained, but also for work and labor of the same kind performed upon goods already delivered out of the possession of such dyers, etc., they the undermentioned persons, being either dyers, dressers, bleachers, etc., thereby gave public notice that they would never thenceforward take into their possession any goods to be dyed, dressed, bleached, etc., unless under express condition that the goods so delivered to them for the purpose of being bleached, etc., should not only be subject to the debt due for the work and labor performed upon them, but also for the general balance due from the persons employing them for

[1] Only opinion of Lawrence, J., is printed. — ED.

work and labor of the same kind, performed upon goods which they had already delivered out of their possession;" and it ended with a desire to all persons meaning to employ them to take notice of the same.

LAWRENCE, J. It is admitted that this agreement might have been lawfully made between A and B, but it is objected to as illegal, because made by a body of men. Now it is laid down in the case in Burrow that liens are for the convenience of commerce, and that they are on the side of natural justice. And the question here is, whether an agreement, which is on the side of natural justice, be or be not illegal, it having been made by a number of persons. But I cannot say that it is illegal, when it is supported on such a foundation; and if it be not illegal, it must be binding upon the parties.

Judgment of nonsuit.

JONES *v.* LEES.

IN THE EXCHEQUER, 1856.

[*Reported* 1 *H. & N.* 189.[1]]

[DECLARATION: that the plaintiff, patentee, granted defendant license to use the invention upon a royalty basis, and that the defendant covenanted with the plaintiff that he would not, during the continuance of the license, make or sell any slubbing machines without the invention of the plaintiff applied to them. Breach: sales by the defendant without the attachment.]

BRAMWELL, B. I am of the same opinion. No doubt the court may see that a stipulation which a person has entered into to bind himself and his capital is made without a reasonable consideration. On the other hand, we ought to see that very clearly before we interfere. Here the plaintiff is owner of a patent for a term of fourteen years, and he assigns his interest in it to the defendant, who covenants that he will not, during the term, make or sell any slubbing machines without that invention applied to them. How can we say that such a contract is unreasonable? It is objected that the restraint extends to all England; but so does the privilege. The cases with respect to the sale of a good will do not apply, because the trade, which is the subject-matter of the sale, is local, and, therefore, a prohibition against carrying it on beyond that locality would be useless; here, however, there is no limit to the place within which the license is to be exercised.

Judgment for the plaintiff.

[1] Only opinion of Bramwell, B., is printed. — ED.

STOVALL v. McCUTCHEN.

In the Court of Appeals of Kentucky, 1900.

[*Reported* 54 *S. W. Rep.* 969.[1]]

White, J. In May, 1895, appellant and appellees, all merchants of Russellville, signed an agreement as follows: "We, the undersigned, merchants of Russellville, do hereby agree and obligate ourselves to close our place of business at 6.30 o'clock, beginning May 15th, 1895, and lasting until the first of September." The pleadings and proof all agree that the intention of this writing was that the stores were to be closed at 6.30 P. M., of each day during the time specified, except on Saturdays. After compliance for a few evenings after the 15th of May, appellant notified appellees that he declined to further comply with the agreement, but would disregard it. This he did. Appellees instituted this action to obtain an injunction against appellant to prevent a violation of the agreement, or, rather, to compel him to specifically perform the agreement.

While it is true that contracts in restraint of trade are to be carefully scrutinized, and looked upon with disfavor, all contracts in restraint of trade are not illegal. The restraint here put is but partial, — very inconsiderable. It is but a few hours, at most, each day, and for 3½ months, during the extremely hot weather. It has come within the observation of the members of this court, that during this season (May 15th to September) many merchants close about 6.30 or 7 P. M. This cannot be held to be an illegal restraint of trade.

Injunction granted.

WICKENS v. EVANS.

In the Exchequer, 1829.

[*Reported* 3 *Yo. & Jer.* 318.[2]]

[This was an agreement between three persons carrying on the business of box-makers to divide the trade of England amongst themselves according to a partition made in black lines upon *Bowles's Post Map of England and Wales.* Breach: ten sales by the defendant within the territory assigned to the plaintiff. General demurrer.]

Garrow, B. The legality of a partial restraint of trade has been established by a variety of cases. It has been supposed that the public are interested in precluding the parties from entering into the agreement now in question, but I think it very doubtful. Let us see what is the case. It appears, according to the recital in the agree-

[1] Only one point is printed. — Ed.

[2] This case is abridged. — Ed.

ment, that these three persons, in carrying on their business of box-makers, had travelled into various parts of the country to vend their boxes and trunks, and had sustained great loss and inconvenience by reason of exercising their trade in the same places. This is the mischief and evil recited in the agreement; and what is the remedy they propose? Not a monopoly, except as between themselves; because every other man may come into their districts and vend his goods; all they propose is, that they shall not carry on a rivalry, nor continue any longer to trade throughout the country. This, then, is only a partial restraint of trade. But, it is said that, admitting that to be so, there is no consideration extrinsic of the agreement itself; and that argument is illustrated by the cases of a master giving up his business to his apprentice or to his journeyman. It strikes me, however, that, in the present case, there is as good a consideration as in either of those alluded to. Each party here, before the agreement is entered into, has a trade in all the districts; and he agrees to retire, and to relinquish that trade in two of those districts, in order to secure the others in undisturbed possession.

Judgment for plaintiff.

JONES *v.* FELL.

In the Supreme Court of Florida, 1854.

[*Reported* 5 *Fla.* 510.[1]]

[Suit by a pilot of the harbor of Pensacola to recover from his associates a share of the profits claimed to be due him under an agreement to unite in the business of pilotage. It appeared that according to this agreement each of the three pilots was to be on duty one day, and off duty two days; and all were to share alike. The court refused to instruct that the agreement was void as in restraint of trade.]

Baltzell, J. Associations are so common an element, not only in commerce, but in all the affairs of life, that it would be rather perilous on the part of the court to assert that they impair competition, destroy emulation, and diminish exertion. There is scarcely an occupation in life, scarcely a branch of trade, from the very largest to the smallest, that does not feel the exciting and invigorating influence of this wonderful instrumentality. It made and conducts our government, constructs our railroads, our steam vessels, our magnificent ships, our temples of worship, structures for public and private use, our manufactories, creates our institutions for learning, builds up our cities and towns.

Its very office is to do what individual exertion may not accomplish, and in a degree distinguishes civilized from savage life. Why then

[1] This case is abridged. — Ed.

should this important agency be denied to this meritorious class of our citizens? They are in general men of small means, to whom an association may not only be desirable, but necessary and indispensable. Were our minds less clear on the subject, we are not permitted to assert the invalidity of the act on this account.

Judgment affirmed.

COLLINS *v.* LOCKE.

In the Privy Council, 1879.

[*Reported L. R.* 4 *A. C.* 674.[1]]

[Agreement between four parties then engaged in carrying on the business of stevedores in the port of Melbourne for the purpose of preventing competition. The principal shipping firms were by the provisions of the agreement divided into four sets, one set being allotted to each party to the agreement, if he can get them; if not an equivalent to be given; other ships to be taken in order of arrival, and no other party to interfere. Verdict for plaintiff for violation of the agreement.]

Sir Montague E. Smith. The objects which this agreement has in view are to parcel out the stevedoring business of the port amongst the parties to it, and so to prevent competition, at least amongst themselves, and also, it may be, to keep up the price to be paid for the work. Their Lordships are not prepared to say that an agreement, having these objects, is invalid if carried into effect by proper means, that is, by provisions reasonably necessary for the purpose, though the effect of them might be to create a partial restraint upon the power of the parties to exercise their trade.

Applying the rule to be collected from the authorities, it appears to their Lordships that the provision contained in the second clause of the deed, viz., that if either of the named persons should refuse to allow the stevedoring of any ship to be done by the party entitled to it under the first clause, and should require one of the other parties to do it, such party so required should give an equivalent to the party who lost the stevedoring, to be determined by arbitrators, is not unreasonable, since it provides in a fair and reasonable way for each party obtaining the benefit of the stevedoring of the ships to which by the contract he was to be entitled. Each party might in turn derive benefit from this clause, and one of the four firms would always get the profit of the ship stevedored, though the work might be done by another of them. As regards the merchant, also, he can have his ship stevedored by the party whom he may require to do it; at least there is no prohibition against his having it so done.

But the operation of the covenant at the end of the first clause, upon

[1] This case is abridged. — Ed.

which the third breach in the action is founded, is productive of wholly different results. That covenant is only modified by clause 2 as regards the original consignees, and therefore in the case of ships passing out of the hands of the named firms to which they were consigned on arrival, and being chartered or loaded by other merchants (which is the present case), the effect of the covenant is, that as to such ships, if the merchants loading them should not choose to employ the party to the agreement who, as between themselves, was entitled to do the stevedoring, all the parties to the agreement are deprived of the work; in the words of Mr. Justice FELLOWS such ships are, "so to speak, tabooed to them all." The covenant in such cases restrains three of the four parties to the agreement from exercising their trade, without giving any profit or benefit to compensate for the restriction to either of the four, whilst the combination they have thus entered into is obviously detrimental to the public, by depriving the merchants of the power of employing any of these parties, who are probably the chief stevedores of the port, to load their ships, unless in each case they employ the one of the four to whom the ship, as between themselves, has been allotted, however great and well founded their objections may be to employ him. Such a restriction cannot be justified upon any of the grounds on which partial restraints of trade have been supported. It is entirely beyond anything the legitimate interests of the parties required, and is utterly unprofitable and unnecessary, at least for any purpose that can be avowed.

Judgment accordingly.

JONES v. NORTH.

IN THE CHANCERY, 1875.

[*Reported L. R.* 19 *Eq.* 426.]

SIR JAMES BACON, V. C. There is nothing to justify this demurrer. The case is very plain, and, on one side at least, a very honest one. Several gentlemen, who are owners of quarries, agree that they will sell to one of them a quantity of stone, in view of his tendering to the Corporation of Birmingham for what the corporation want, and the present defendants sell by the bought and sold note (which is set out) a quantity of stone to the plaintiff. Upon it being pointed out to the defendants that what is called the bought and sold note does not specify that they shall not supply the Corporation of Birmingham, they enter into a written engagement, which becomes part of the contract for the purchase and sale, that they will not supply the corporation during the year 1875. How are they to escape from that contract? Is there any ground on which this court can withhold from the plaintiff the protection to which that contract entitles him? I am aware of none. The grounds which have been argued first of all are that

the corporation should be parties. Why? The corporation, whatever the form of the contract between them and the defendants, could not enforce specific performance of it. If the defendants so involved themselves as that they are unable to perform their contract with the corporation, the corporation require no assistance, and are entitled to none from this court, because by an action at law they can at once inflict upon the defendants the penalty which they have most justly incurred by entering into a contract with them totally in violation of the good faith which they owed to the plaintiff. The suggestion that the plaintiff's position would not be bettered by granting the injunction is one to which I cannot listen for a moment. The plaintiff does not ask the court to better his position. All that he asks is that the defendants should not violate their plain contract to the plaintiff's prejudice. What ground of demurrer can there be in that? The last point, which was touched faintly by Mr. *Jackson*, but enlarged upon by his junior, is, that the plaintiff must come into court with clean hands. Everybody will admit that cardinal rule, and in my opinion his hands are wholly unpolluted. It is perfectly lawful for the owners of three quarries to agree that they will sell their commodities upon terms suitable to themselves, and which they approve of; and although they know that the purchaser is going to supply, or offer to supply the Corporation of Birmingham with the commodity, that does not in the least restrict their right to deal *inter se*, nor does such dealing deserve to be characterized as a conspiracy. There is nothing illegal in the owners of commodities agreeing that they will sell as between themselves at a certain price, leaving one of them to make any other profit that he can. Upon no ground whatever, in my opinion, can this demurrer be sustained, and it must be overruled with costs.

CLARK *v.* FRANK.

In the Court of Appeals of Missouri, 1885.

[*Reported* 17 *Mo. App.* 602.[1]]

[Action for the price of 700 doz. spools of "Clark's O. N. T." thread sold and delivered by the plaintiff to the defendants. Defendants showed that by agreement a rebate was to be given, provided the defendants should strictly maintain the trade price. Plaintiff showed that defendants had sold in certain cases below trade prices. Judgment for plaintiff for whole amount. Appeal.]

Thompson, J. We see no force in the argument that the agreement not to sell the goods at less than the trade price was void as being in restraint of trade, so far as it related to goods which might be purchased of other dealers. If it were void, that fact would not

[1] This case is abridged. — Ed.

help the defendants, for the plaintiff merely chose to say that he would allow certain drawbacks upon the performance of a certain condition. Now, whether the condition is good or bad, the defendants, not having performed it, cannot claim the drawbacks, for this would be to allow them not merely to reject so much of a contract as was void, but to make the plaintiff agree to do that which he never agreed to do.

We see nothing further in the points made by the appellants which requires discussion. The judgment will be affirmed with ten per cent. damages. All the judges concur.

VAN MARTER *v.* BABCOCK.

In the Supreme Court of New York, 1857.

[*Reported* 23 *Barb.* 633.]

Welles, J. The agreement appears to consist of two distinct parts, having two separate objects in view. In the first place, the plaintiff agrees to sell to the defendants all the mint oil which is produced upon twenty-three acres of peppermint then growing, the parties agreeing that the contract should include and cover all the oil of peppermint which the plaintiff should raise, grow, or distil, or in any way produce or be interested in the production of, for two years from the date of the contract; the defendants agreeing to take the same at a price agreed upon in the contract. So far, it cannot be contended there was any restriction upon the plaintiff as to the quantity of oil he was at liberty to manufacture or produce; on the contrary, he was left at liberty to produce all he chose and where he pleased. The extent of his obligation was to sell to the defendants all he should produce, etc., within the specified time. In the next place, the plaintiff agrees to discontinue his interest in the production of peppermint oil (with the above exception) until the first of March, 1849, and agrees not to sell, give, or barter away any peppermint roots to any person whatever until the time last mentioned, and not to distil for any other person, etc., excepting for those who shall have contracted their oil of peppermint to the defendants, nor to sell, rent, or give away his distillery or the use of it, etc., for two years; and that no peppermint roots except two acres, etc., shall be grown, or oil distilled, on any part or portion of his farm or farms, or lands occupied by or for him, until the first of March, 1849, excepting for the production of the oil of peppermint as sold by him to the defendants under the same contract. It will be perceived that the exceptions contained in this latter part of the contract entirely neutralize all expressions or language contained in the instrument, from which a total restraint could be inferred. All the rights which the first part of it secures to the

plaintiff are, in the second, fully preserved. Among them was the right to manufacture and produce all the peppermint, or the oil thereof, which he was able or chose to manufacture or produce, without restriction. He was only bound to let the defendants have it all at the price stipulated. If they refused to take it all, he would be released, and at liberty to sell it elsewhere. If they received and paid for it according to the contract, no harm would be done to any one. It is impossible to discover that in either event, or in any aspect, there was anything like such a restraint upon the plaintiff in his business or trade as the law prohibits.

Motion for new trial denied.

MEYER *v.* ESTES.

In the Supreme Court of Massachusetts, 1895.

[*Reported* 164 *Mass.* 457.[1]]

Contract, for breach of the following agreement: —

"The undersigned, Messrs. Estes and Lauriat and Messrs. S. E. Cassino & Co., of Boston, Mass., U. S. A., hereby agree to use all electrotypes ordered from the Bibliographical Institute Meyer, in Leipzig, only for the purpose of illustrating works to be published by the said Estes and Lauriat and the said S. E. Cassino & Co., or their heirs or successors in business, in the English language and in the United States of America.

"Estes and Lauriat and S. E. Cassino & Co. agree not to sell these electrotypes to any other parties, nor to multiply them for the purpose of selling them, and to be responsible for every and all wrong use of said electrotypes to the amount of any damages which may have been caused thereby to the Bibliographical Institute Meyer, and to pay, furthermore, a fine to the Bibliographical Institute Meyer equal to the tenfold price of the wrongly used electrotypes. Estes & Lauriat. S. E. Cassino & Co. Boston, May 10th, 1883."

Field, C. J. It sufficiently appears that the plaintiff at the date of the agreement was the general owner of the plates, and of the right to multiply, sell, and use them, and that in his dealings with the defendants he required an agreement on their part that they would use them only in their own publications, and would not sell them or multiply them for the purpose of selling them, in order that he might have the opportunity of selling the plates to other persons who might wish to use them in their publications, or might be able to protect persons to whom he had already sold the right to use the plates.

We think that it must be held that the plates were sold to the de-

[1] This case is abridged. — Ed.

fendants so that the title passed to them. The agreement on their part not to sell them to other parties, nor to multiply them for the purpose of selling, is in the nature of an agreement in restraint of trade. Considering the nature of the property, we are of opinion that such an agreement is reasonable, and one which ought to be enforced between the parties to it. See *Henry Bill Publishing Co.* v. *Smythe*, 27 Fed. Rep. 914; *Clemens* v. *Estes*, 22 Fed. Rep. 899; *Parton* v. *Prang*, 3 Cliff. 537. The price to be paid for the plates, if they were to become the absolute property of the purchaser, without any restriction upon the use to be made of them, might reasonably be more than if they were purchased under such an agreement as is the foundation of this suit.

Remanded.

HOUCK & CO. *v.* WRIGHT.

In the Supreme Court of Mississippi, 1899.

[*Reported* 77 *Miss.* 476.]

Vose & Sons were manufacturers of pianos at Boston, Massachusetts; Houck & Co. were dealers in musical instruments at Memphis, Tennessee. The manufacturers agreed with the Memphis dealers that the latter should have, to the exclusion of all others, the right to sell pianos of the former's manufacture in certain territory contiguous to Memphis, in Arkansas, West Tennessee, and North Mississippi, including Leflore county, in this state. Houck & Co., through a travelling salesman, received a written contract or order for a piano of Vose & Sons' manufacture from Wright, at Greenwood, in said county, by the terms of which the same was to be shipped to Greenwood and $100 of its price was to be paid upon delivery. The piano was so shipped and tendered to Wright, but he refused to receive it. This suit was begun by Houck & Co. to recover upon the contract made with Wright. The court below gave a peremptory instruction for the defendant.

Terral, J., delivered the opinion of the court.

If the contract between Vose & Sons, of Boston, and Houck & Co., of Memphis, were, for any cause, illegal, such illegality could not affect the contract between Houck & Co. and C. E. Wright, because it is collateral to it. 2 Beach, Mod. Law of Contracts, sect. 1589.

But the arrangement between Vose & Sons and Houck & Co. is entirely legal. It does not operate to suppress competition, nor to regulate the production or sale of any commodity. As said by counsel of appellant, its purpose is to facilitate and advance the sale of pianos. It is Vose & Sons regulating their own business, endeavoring thereby to sell as many pianos as possible, and on the best terms for themselves and their customers. Instead of having an agent in every

county in North Mississippi, which might be burdensome, or perhaps ruinous to their business, they have an agent in a trade centre, Memphis, where they think they can conduct their business to advantage; and the Memphis agents canvass the territory assigned to them, for the sale of their pianos, and when one is ordered they become responsible for the price of it.

The Memphis house could not afford to take an agency, and send out canvassers for the sale of the pianos, if they were to be met everywhere by other agents of Vose & Sons engaged in competition with them in the same business, and so the arrangement they make is mutually advantageous to both parties, and gives equal opportunities for all persons to purchase Vose & Sons' pianos, and upon the most reasonable terms.

The legislature, by the chapter on trusts and combines, did not intend to debar a person from conducting his own private business according to his own judgment. Indeed there is no law, federal or state, that requires a person to sell his goods, against his will, to any other person, or to send agents abroad to seek business, or even to compel him to employ agents in the conduct of his business. These are matters of private judgment and discretion, which belong to every citizen by the laws of nature; they are rights inherent in every freeman, which no human law can rightly supersede or impair.

The plaintiff below by his evidence before the court entitled himself to a judgment, and the contentions of the defendant are without merit.

Reversed and remanded.

PARTITION LEGAL. — *Thompson* v. *Harvey*, 1 Show. 2; *Hearn* v. *Griffin*, 2 Chitty, 78; *Fisken* v. *Rutherford*, 8 Gr. Ch. 9; *Pratt* v. *Tapley*, 3 Pug. 163; *Bowling* v. *Taylor*, 40 Fed. 404; *Fox Co.* v. *Shoen*, 77 Fed. 29; *Am. Co.* v. *Paper Co.*, 83 Fed. 619; *Fowle* v. *Parke*, 131 U. S. 88; *Keith* v. *Optical Co.*, 48 Ark. 138; *Schwalm* v. *Holmes*, 49 Cal. 665; *Weibolt* v. *Standard Co.*, 80 Ill. 67; *Roller* v. *Ott*, 14 Kans. 609; *Gloucester Co.* v. *Russia Co.*, 154 Mass. 92; *National Co.* v. *Union Co.*, 45 Minn. 272; *Newell* v. *Meyfendorff*, 9 Mont. 254; *Saddlery Co.* v. *Mills*, 68 N. H. 216; *Lawrence* v. *Kidder*, 10 Barb. 641; *Rock Co.* v. *Brown*, 61 N. J. 536; *Welch* v. *Windmill Co.*, 89 Tex. 653; *Clark* v. *Crosby*, 37 Vt. 188. — ED.

SECTION II. — SUPPRESSION OF COMPETITION.

A. Constraint of Trade.

(1) *Conspiracy.*

ANONYMOUS.

In the King's Bench, 1869.

[*Reported* 12 *Mod.* 248.]

Leave was granted to file an information against several plate-button makers for combining by covenants not to sell under a set rate.

Holt, *Chief Justice.* It is fit that all confederacies by those of trade to raise their rates should be suppressed.

REX *v.* JOURNEYMEN TAILORS OF CAMBRIDGE.

In the King's Bench, 1721.

[*Reported* 8 *Mod.* 10.[1]]

One Wise and several other journeymen tailors, of or in the town of Cambridge, were indicted for a conspiracy amongst themselves to raise their wages, and were found guilty.

It was moved in arrest of judgment upon several errors in the record.

The Court. The indictment, it is true, sets forth that the defendants refused to work under the wages which they demanded; but although these might be more than is directed by the statute, yet it is not for the refusing to work, but for conspiring that they are indicted, and a conspiracy of any kind is illegal, although the matter about which they conspired might have been lawful for them, or any of them to do, if they had not conspired to do it, as appears in the case of *The Tubwomen* v. *The Brewers of London.*

[1] Only one point is printed. — Ed.

REGINA *v.* HEWITT.

In the Queen's Bench, 1851.

[*Reported* 5 *Cox, C. C.* 162.]

It appeared that all the defendants were members of a club or society, called "The Philanthropic Society of Coopers." It was a benefit society. Hewitt was the president, and Jack was the secretary. The society had an acting member in every cooper's yard. A man named Charles Evans was a member of the society. He was working in Mr. Turner's yard, but, with the permission of Mr. Turner, he did four days' work at the steam mills of Messrs. Rosenberg and Montgomery, where steam machinery was extensively employed for making casks. When this came to the knowledge of the committee of the society, they inflicted a fine of 10*l.* payable by instalments, upon Evans, for working in a yard where steam machinery was employed. Evans refused to pay, and the other men in Mr. Turner's yard then left their work and refused to return while Evans was employed. Evans was, in consequence, thrown out of work. Each man who left Turner's yard on account of Evans was paid 9*s.* for his loss of time, by the committee. The fine was imposed in accordance with the rules of the society.

Lord Campbell, C. J. It appears to me that this is one of the most important cases ever brought before a British jury, and upon its result must depend very much the prosperity of the manufacturers and the good of the operatives. But let it be clearly understood that, whatever may be the result of this case, such societies as the present are not in any way illegal. The Philanthropic Society is, according to its rules, a most lawful and a most beneficial institution; the object of it is to take care of its members when sick, and to provide a decent funeral for them when they are called away; but it cannot be permitted that, under the guise of such laudable objects, the members shall enter into a combination or conspiracy to injure others. By law every man's labor is his own property, and he may make what bargain he pleases for his own employment; not only so — masters or men may associate together; but they must not, by their association, violate the law; they must not injure their neighbor; they must not do that which may prejudice another man. The men may take care not to enter into engagements of which they do not approve, but they must not prevent another from doing so. If this were permitted, not only would the manufacturers of the land be injured, but it would lead to the most melancholy consequences to the working classes. No doubt the defendants may have been under a delusion that they were doing what they were entitled to do, but they must be instructed that the law must be obeyed, and that they cannot be permitted to injure their neighbors in carrying out that which they may consider to be a pro-

tection to themselves. It has been stated by the witnesses, that a fine follows a man all over London and all over England. This shows the power of the society. Let them have their rules, and let them act under them; but if they are to fine for some nondescript offence, and that fine is to follow a man all over England, — if the man is always to go about with that brand upon him, it becomes the more important that judges and juries should see that such societies do not infringe the law. The payment to the men of the 9*s.* each for their loss of time was taken from the funds of the society, and was a clear perversion of its objects.

Verdict — Guilty.

OLD DOMINION STEAMSHIP CO. *v.* McKENNA.

IN THE CIRCUIT COURT OF THE UNITED STATES, 1887.

[*Reported* 30 *Fed.* 48.]

BROWN, J. This action was brought to recover $20,000 damages, alleged to have been sustained by the plaintiff through the unlawful action of the defendants in the recent strike of the longshoremen, and in their attempt to boycott the plaintiff in its business as a common carrier. The defendants are alleged to constitute, or to style themselves an "Executive Board of the Ocean Association of the Longshoremen's Union." At the time of the commencement of the action they were arrested and held to bail under orders of arrest issued in conformity with the state practice. The defendants now move, upon the plaintiff's papers only, to vacate the order of arrest, on the ground that the material facts charged are alleged on information and belief only, without a sufficient statement of the sources of information; that the facts stated do not make out a *prima facie* case; that it appears that the defendants were acting within their legal rights; and that the plaintiff's loss, if any, is *damnum absque injuria;* and that, at best, the plaintiff's case is so doubtful that the order of arrest should not be sustained.

I have carefully considered the elaborate arguments of counsel, and examined the numerous authorities referred to. For lack of time, I can only state my conclusions: —

1. All the material averments are either stated positively, or the source of information is sufficiently indicated.

2. The facts stated in the complaint and affidavit constitute a legal cause of action against all the defendants, for the actual damages suffered, for the following reasons: —

(*a*) The plaintiff was engaged in the legal calling of a common carrier, owning vessels, lighters, and other craft used in its business, in the employment of which numerous workmen were necessary, who, as

the complaint avers, were employed "upon terms as to wages which were just and satisfactory."

(*b*) The defendants, not being in plaintiff's employ, and without any legal justification, so far as appears, — a mere dispute about wages, the merits of which are not stated, not being any legal justification, — procured plaintiff's workmen in this city and in southern ports to quit work in a body, for the purpose of inflicting injury and damage upon the plaintiff until it should accede to the defendants' demands, and pay southern negroes the same wages as New York longshoremen, which the plaintiff was under no obligation to grant; and such procurement of workmen to quit work being designed to inflict injury on the plaintiff, and not being justified, constituted in law a malicious and illegal interference with the plaintiff's business, which is actionable.

(*c*) After the plaintiff's workmen, through the defendants' procurement, had quit work, the defendants, for the further unlawful purpose of compelling the plaintiff to pay such a rate of wages as they might demand, declared a boycott of the plaintiff's business, and attempted to prevent the plaintiff from carrying on any business as common carrier, or from using or employing its vessels, lighters, etc., in that business, and endeavored to stop all dealings of other persons with the plaintiff, by sending threatening notices or messages to its various customers and patrons, and to the agents of various steamship lines, and to wharfingers and warehousemen usually dealing with the plaintiff, designed to intimidate them from having any dealings with it, through threats of loss and expense in case they dealt with the plaintiff by receiving, storing, or transmitting its goods, or otherwise; and various persons were deterred from dealing with the plaintiff in consequence of such intimidations, and refused to perform existing contracts, and withheld their former customary business, greatly to the plaintiff's damage.

(*d*) The acts last mentioned were not only illegal, rendering the defendants liable in damages, but also misdemeanors at common law as well as by section 168 of the Penal Code of this state.

(*e*) Associations have no more right to inflict injury upon others than individuals have. All combinations and associations designed to coerce workmen to become members, or to interfere with, obstruct, vex, or annoy them in working, or in obtaining work, because they are not members, or in order to induce them to become members; or designed to prevent employers from making a just discrimination in the rate of wages paid to the skilful and to the unskilful; to the diligent and to the lazy; to the efficient and to the inefficient; and all associations designed to interfere with the perfect freedom of employers in the proper management and control of their lawful business, or to dictate in any particular the terms upon which their business shall be conducted, by means of threats of injury or loss, by interference with their property or traffic, or with their lawful employment of other persons, or designed to abridge any of these rights, — are *pro tanto* illegal combinations or associations; and all acts done in furtherance

of such intentions by such means, and accompanied by damage, are actionable. See Greenh. Pub. Pol. 648, 653; *People* v. *Fisher*, 14 Wend. 1; *Tarleton* v. *McGawley*, Peake, *205; *Rafael* v. *Verelst*, 2 W. Bl. 1055; *Lumley* v. *Gye*, 2 El. & Bl. 216; *Bowen* v. *Hall*, 6 Q. B. Div. 333, 337; *Gregory* v. *Duke of Brunswick*, 9 Man. & G. 205; *Gunter* v. *Astor*, 4 J. B. More, 12; *Reg.* v. *Rowlands*, 17 Adol. & E. (N. S.) 671, 685; *Mogul St. Co.* v. *McGregor*, 15 Q. B. Div. 476; *Walker* v. *Cronin*, 107 Mass. 555; *Carew* v. *Rutherford*, 106 Mass. 1; *State* v. *Donaldson*, 32 N. J. Law, 151; *Master Stevedores' Ass'n* v. *Walsh*, 2 Daly, 1, 13; *Johnston Co.* v. *Meinhardt*, 60 How. Pr. 168; *Slaughter-house Cases*, 16 Wall. 36, 116.

3. There is no such doubt concerning the plaintiff's legal rights as should debar it from the usual remedy. The motion to discharge from arrest is therefore denied.

CURRAN *v.* GALEN, AS PRESIDENT OF BREWERY WORKINGMEN'S LOCAL ASSEMBLY, 1796, KNIGHTS OF LABOR.

IN THE COURT OF APPEALS OF NEW YORK, 1897.

[*Reported* 152 *N. Y.* 33.]

PER CURIAM. The organization of the local assembly in question by the workingmen in the breweries of the city of Rochester may have been perfectly lawful in its general purposes and methods and may, otherwise, wield its power and influence usefully and justly, for all that appears. It is not for us to say, nor do we intend to intimate, to the contrary; but so far as a purpose appears from the defence set up to the complaint that no employé of a brewing company shall be allowed to work for a longer period than four weeks, without becoming a member of the Workingmen's Local Assembly, and that a contract between the local assembly and the Ale Brewers' Association shall be availed of to compel the discharge of the independent employé, it is, in effect, a threat to keep persons from working at the particular trade and to procure their dismissal from employment. While it may be true, as argued, that the contract was entered into, on the part of the Ale Brewers' Association, with the object of avoiding disputes and conflicts with the workingmen's organization, that feature and such an intention cannot aid the defence, nor legalize a plan of compelling workingmen, not in affiliation with the organization, to join it, at the peril of being deprived of their employment and of the means of making a livelihood.

In our judgment, the defence pleaded was insufficient, in law, upon the face thereof, and, therefore, the demurrer thereto was properly sustained.

Judgment affirmed.

LOWRY *v.* TILE, MANTEL & GRATE ASSOCIATION.

In the Circuit Court of the United States, 1899.

[*Reported* 98 *Fed.* 817.[1]]

Morrow, District Judge. This is an action at law brought to recover damages alleged to have been sustained by plaintiffs by reason of injury to their business caused by the forming of an association by defendants claimed to be within the prohibitory provisions of the act of Congress of July 2, 1890, commonly known as the "Sherman Anti-trust Act." The amended complaint alleges: That, about the time of the formation of the association, plaintiffs had placed orders for tiles with the Columbia Encaustic Tile Company, which cancelled plaintiffs' orders because plaintiffs did not belong to the Tile, Mantel and Grate Association. That said organization is within the statute of the 51st Congress, passed and approved July 2, 1890, known as "Chapter 647, Supplement to the Revised Statutes at Large of the United States." That, by reason of the monopoly of such association, plaintiffs are damaged in the sum of $10,000. Plaintiffs pray for treble the sum of $10,000, in accordance with the provisions of the above-named act, and for further equitable relief. The ground of demurrer was that the amended complaint did not state facts sufficient to constitute a cause of action.

The allegations charging conspiracy and combination to raise the price of the commodities in question, and of an agreement by the members of such combination to sell these commodities at such prices as shall be arbitrarily fixed by the combination in question, together with the further allegation that such combination has been made with the intent of monopolizing trade and commerce between California and other states, are sufficient, under these authorities, to bring the case within the operation of the provisions of the Sherman Act. Defendants' demurrer upon the ground of the insufficiency of the facts stated to constitute a cause of action cannot, therefore, be sustained.

Conspiracy Illegitimate. — R. *v.* Bykerdike, 1 M. & Rob. 179; R. *v.* Parnell, 14 Cox, C. C. 508; Hornby *v.* Close, L. R. 2 Q. B. 153; Orr *v.* Ins. Co., 12 La. Ann. 255; Plant *v.* Woods, 176 Mass. 492; Lucke *v.* Assembly, 77 Md. 396; Weston *v.* Barnicott, 175 Mass. 454; Mapstick *v.* Ramage, 9 Neb. 390; Ertz *v.* Produce Exchange, 79 Minn. 140; State *v.* Dyer, 67 Vt. 695; Gatson *v.* Buerning, 106 Wis. 1. — Ed.

[1] This case is much abridged. — Ed.

(2) *Combination.*

DRY *v.* BOSWELL.

AT NISI PRIUS, 1888.

[*Reported* 1 *Campbell*, 329.]

ASSUMPSIT for work and labor, and materials in and about the repairs of a lighter. Plea, the general issue.

There was no doubt as to the repairs being done; and the only question was, whether the defendant was liable for them.

The witnesses first stated that the lighter was the sole property of a person of the name of Russell; that she was let out by him to the defendant, who worked her; and that the two shared her profits equally between them.

Lord Ellenborough said, in that case the defendant was to be considered a partner, and was jointly liable for the repairs done to the lighter. There was here a participation of profit and loss, which constituted a partnership.

But the agreement with Russell subsequently appeared to be this, that the defendant in consideration of working the lighter should receive half her gross earnings, and that Russell as owner should receive the other half.

Lord Ellenborough observed, that this was only a mode of paying the defendant wages for his labor, and was different from a participation of profits and loss; so that under these circumstances no partnership could be considered as existing between him and the owner of the lighter.

Evidence, however, was afterwards given of the defendant having himself ordered the repairs to be done, and the plaintiff had a verdict.

CENTRAL SHADE ROLLER CO. *v.* CUSHMAN.

IN THE SUPREME COURT OF MASSACHUSETTS, 1887.

[*Reported* 143 *Mass.* 353.]

W. ALLEN, J. The contract which is sought to be enforced by this bill, and the validity of which is the only question presented by the demurrer and argued by the parties, was made between the plaintiff, of the first part, and three manufacturers, under several patents of certain curtain fixtures, known as "wood balance shade rollers," of the second part, in pursuance of an arrangement between the persons forming the party of the second part, that the plaintiff corporation

should be created for the purpose of becoming a party to the contract with them. The general purpose of the combination was to prevent, or rather to regulate, competition between the parties to it in the sale of the particular commodity which they made.

This is a lawful purpose; but it is argued that the means employed to carry it out, the creation of the plaintiff corporation, and the terms of the contract with it, are against public policy, and are invalid.

The fact that the parties to the combination formed themselves into a corporation, of which they were the stockholders, that they might contract with it instead of with each other, and carry out their scheme through its agency, instead of that of a preëxisting person, is obviously immaterial; and the only ground upon which it can be argued that the contract is invalid is the restraint it puts upon the parties to it. Does the contract impose a restraint as to the manufacture or the sale of balance shade rollers which is void as against public policy? The contract certainly puts no restraint upon the production of the commodity to which it relates. It puts no obligation upon, and offers no inducement to, any person to produce less than to the full extent of his capacity. On the contrary, its apparent purpose is, by making prices more uniform and regular, to stimulate and increase production.

The contract does not restrict the sale of the commodity. It does not look toward withholding a supply from the market in order to enhance the price, as in *Craft* v. *McConoughy*, 79 Ill. 346, and other cases cited by the defendant. On the contrary, the contract intends that the parties shall make sales, and gives them full power to do so; the only restrictions being that sales not at retail or for export shall be in the name of the plaintiff, and reported to it, and the accounts of them kept by it, and the provision that, when any party shall establish an agency in any city or town for the sale of a roller made exclusively for that purpose, no other party shall take orders for the same roller in the same place. To these restrictions, clearly valid, is added the one which affords an argument for the invalidity of the contract, the restriction as to price. That restriction is, in substance, that the prices for rollers of the same grade made by the different parties shall be the same, and shall be according to a schedule contained in the contract, subject to changes which may be made by the plaintiff upon recommendation of three fourths of its stockholders. In effect, it is an agreement between three makers of a commodity, that, for three years, they will sell it at a uniform price fixed at the outset, and to be changed only by consent of a majority of them. The agreement does not refer to an article of prime necessity, nor to a staple of commerce, nor to merchandise to be bought and sold in the market, but to a particular curtain fixture of the parties' own manufacture. It does not look to affecting competition from outside, — the parties have a monopoly by their patents, — but only to restrict competition in price between themselves. Even if such an agreement tends to raise the price of the commodity, it is one which the parties

have a right to make. To hold otherwise would be to impair the right of persons to make contracts, and to put a price on the products of their own industry.

But we cannot assume that the purpose and effect of the combination are to unduly raise the price of the commodity. A natural purpose and a natural effect are to maintain a fair and uniform price, and to prevent the injurious effects both to producers and customers of fluctuating prices caused by undue competition. When it appears that the combination is used to the public detriment, a different question will be presented from that now before us. The contract is apparently beneficial to the parties to the combination, and not necessarily injurious to the public; and we know of no authority or reason for holding it to be invalid, as in restraint of trade or against public policy.

We have not overlooked other provisions of the contract which were adverted to in the argument, but we do not find anything which renders it invalid, or calls for special consideration.

In the opinion of a majority of the court, the entry must be,

Demurrer overruled.

In re DOOLITTLE AND ANOTHER, STRIKERS.

IN THE CIRCUIT COURT OF THE UNITED STATES, 1885.

[*Reported* 23 *Fed.* 544.[1]]

Mr. Charles C. Allen. Do I understand your Honor to say that the act of striking — merely carrying out of the strike — was unlawful?

THE COURT (Judge BREWER). It is not the mere stopping themselves together, but it is preventing the owners of the road from managing their own engines and running their own cars, that is where the wrong comes in. Anybody has a right to quit work, but in interfering with other persons working, and preventing the owners of railroad trains from managing those trains as they see fit, there is where the wrong comes in.

Convicted.

[1] Only one point in the charge is printed. — ED.

THE MOGUL STEAMSHIP CO. LIMITED v. McGREGOR & CO. AND OTHERS.

IN THE COURT OF APPEAL, JULY 13, 1889.

[*Reported in Law Reports, 23 Queen's Bench Division,* 598.]

BOWEN, L. J.[1] We are presented in this case with an apparent conflict or antinomy between two rights that are equally regarded by the law — the right of the plaintiffs to be protected in the legitimate exercise of their trade, and the right of the defendants to carry on their business as seems best to them, provided they commit no wrong to others. The plaintiffs complain that the defendants have crossed the line which the common law permits; and inasmuch as, for the purposes of the present case, we are to assume some possible damage to the plaintiffs, the real question to be decided is whether, on such an assumption, the defendants in the conduct of their commercial affairs have done anything that is unjustifiable in law. The defendants are a number of ship-owners who formed themselves into a league or conference for the purpose of ultimately keeping in their own hands the control of the tea carriage from certain Chinese ports, and for the purpose of driving the plaintiffs and other competitors from the field. In order to succeed in this object, and to discourage the plaintiffs' vessels from resorting to those ports, the defendants during the "tea harvest" of 1885 combined to offer to the local shippers very low freights, with a view of generally reducing or "smashing" rates, and thus rendering it unprofitable for the plaintiffs to send their ships thither. They offered, moreover, a rebate of five per cent to all local shippers and agents who would deal exclusively with vessels belonging to the Conference, and any agent who broke the condition was to forfeit the entire rebate on all shipments made on behalf of any and every one of his principals during the whole year — a forfeiture of rebate or allowance which was denominated as "penal" by the plaintiffs' counsel. It must, however, be taken as established that the rebate was one which the defendants need never have allowed at all to their customers. It must also be taken that the defendants had no personal ill-will to the plaintiffs, nor

[1] Only the opinion of BOWEN, L. J., is given. FRY, L. J., concurred, but LORD ESHER, M. R., dissented. The decision was afterwards affirmed in the House of Lords. '92, App. Cas. 25. — ED.

any desire to harm them except such as is involved in the wish and intention to discourage by such measures the plaintiffs from sending rival vessels to such ports. The acts of which the plaintiffs particularly complained were as follows: — First, a circular of May 10, 1885, by which the defendants offered to the local shippers and their agents a benefit by way of rebate if they would not deal with the plaintiffs, which was to be lost if this condition was not fulfilled. Secondly, the sending of special ships to Hankow in order by competition to deprive the plaintiffs' vessels of profitable freight. Thirdly, the offer at Hankow of freights at a level which would not repay a ship-owner for his adventure, in order to "smash" freights and frighten the plaintiffs from the field. Fourthly, pressure put on the defendants' own agents to induce them to ship only by the defendants' vessels, and not by those of the plaintiffs. It is to be observed with regard to all these acts of which complaint is made that they were acts that in themselves could not be said to be illegal unless made so by the object with which, or the combination in the course of which, they were done; and that in reality what is complained of is the pursuing of trade competition to a length which the plaintiffs consider oppressive and prejudicial to themselves. We were invited by the plaintiffs' counsel to accept the position from which their argument started — that an action will lie if a man maliciously and wrongfully conducts himself so as to injure another in that other's trade. Obscurity resides in the language used to state this proposition. The terms "maliciously," "wrongfully," and "injure" are words all of which have accurate meanings, well known to the law, but which also have a popular and less precise signification, into which it is necessary to see that the argument does not imperceptibly slide. An intent to "injure" in strictness means more than an intent to harm. It connotes an intent to do wrongful harm. "Maliciously," in like manner, means and implies an intention to do an act which is wrongful, to the detriment of another. The term "wrongful" imports in its turn the infringement of some right. The ambiguous proposition to which we were invited by the plaintiffs' counsel still, therefore, leaves unsolved the question of what, as between the plaintiffs and defendants, are the rights of trade. For the purpose of clearness, I desire, as far as possible, to avoid terms in their popular use so slippery, and to translate them into less fallacious language wherever possible.

The English law, which in its earlier stages began with but an imperfect line of demarcation between torts and breaches of contract, presents us with no scientific analysis of the degree to which the intent to harm, or, in the language of the civil law, the *animus vicino nocendi*, may enter into or affect the conception of a personal wrong; see Chasemore *v.* Richards.[1] All personal wrong means the infringement of some personal right. "It is essential to an action in tort," say the Privy Council in Rogers *v.* Rajendro Dutt,[2] "that the act complained

[1] 7 H. L. C. 349, at p. 388. [2] 13 Moore, P. C. 209.

of should under the circumstances be legally wrongful as regards the party complaining; that is, it must prejudicially affect him in some legal right; merely that it will, however directly, do a man harm in his interests, is not enough." What, then, were the rights of the plaintiffs as traders as against the defendants? The plaintiffs had a right to be protected against certain kind of conduct; and we have to consider what conduct would pass this legal line or boundary. Now, intentionally to do that which is calculated in the ordinary course of events to damage, and which does, in fact, damage another in that other person's property or trade, is actionable if done without just cause or excuse. Such intentional action when done without just cause or excuse is what the law calls a malicious wrong (see Bromage *v.* Prosser; Capital and Counties Bank *v.* Henty, *per* Lord Blackburn [1]). The acts of the defendants which are complained of here were intentional, and were also calculated, no doubt, to do the plaintiffs damage in their trade. But in order to see whether they were wrongful we have still to discuss the question whether they were done without any just cause or excuse. Such just cause or excuse the defendants on their side assert to be found in their own positive right (subject to certain limitations) to carry on their own trade freely in the mode and manner that best suits them, and which they think best calculated to secure their own advantage.

What, then, are the limitations which the law imposes on a trader in the conduct of his business as between himself and other traders? There seem to be no burdens or restrictions in law upon a trader which arise merely from the fact that he is a trader, and which are not equally laid on all other subjects of the Crown. His right to trade freely is a right which the law recognizes and encourages, but it is one which places him at no special disadvantage as compared with others. No man, whether trader or not, can, however, justify damaging another in his commercial business by fraud or misrepresentation. Intimidation, obstruction, and molestation are forbidden; so is the intentional procurement of a violation of individual rights, contractual or other, assuming always that there is no just cause for it. The intentional driving away of customers by show of violence, Tarleton *v.* M'Gawley; the obstruction of actors on the stage by preconcerted hissing, Clifford *v.* Brandon,[2] Gregory *v.* Brunswick; the disturbance of wild fowl in decoys by the firing of guns, Carrington *v.* Taylor [3] and Keeble *v.* Hickeringill; the impeding or threatening servants or workmen, Garret *v.* Taylor; the inducing persons under personal contracts to break their contracts, Bowen *v.* Hall, Lumley *v.* Gye, — all are instances of such forbidden acts. But the defendants have been guilty of none of these acts. They have done nothing more against the plaintiffs than pursue to the bitter end a war of competition waged in the interest of their own trade. To the argument that a competition so

[1] 7 App. Cas. 741, at p. 772. [2] 2 Camp. 358. [3] 11 East, 571.

pursued ceases to have a just cause or excuse when there is ill-will or a personal intention to harm, it is sufficient to reply (as I have already pointed out) that there was here no personal intention to do any other or greater harm to the plaintiffs than such as was necessarily involved in the desire to attract to the defendants' ships the entire tea freights of the ports, a portion of which would otherwise have fallen to the plaintiffs' share. I can find no authority for the doctrine that such a commercial motive deprives of "just cause or excuse" acts done in the course of trade which would but for such a motive be justifiable. So to hold would be to convert into an illegal motive the instinct of self-advancement and self-protection, which is the very incentive to all trade. To say that a man is to trade freely, but that he is to stop short at any act which is calculated to harm other tradesmen, and which is designed to attract business to his own shop, would be a strange and impossible counsel of perfection. But we were told that competition ceases to be the lawful exercise of trade, and so to be a lawful excuse for what will harm another, if carried to a length which is not fair or reasonable. The offering of reduced rates by the defendants in the present case is said to have been "unfair." This seems to assume that, apart from fraud, intimidation, molestation, or obstruction, of some other personal right *in rem* or *in personam*, there is some natural standard of "fairness" or "reasonableness" (to be determined by the internal consciousness of judges and juries) beyond which competition ought not in law to go. There seems to be no authority, and I think, with submission, that there is no sufficient reason, for such a proposition. It would impose a novel fetter upon trade. The defendants, we are told by the plaintiffs' counsel, might lawfully lower rates provided they did not lower them beyond a "fair freight," whatever that may mean. But where is it established that there is any such restriction upon commerce? And what is to be the definition of a "fair freight?" It is said that it ought to be a normal rate of freight, such as is reasonably remunerative to the ship-owner. But over what period of time is the average of this reasonable remunerativeness to be calculated? All commercial men with capital are acquainted with the ordinary expedient of sowing one year a crop of apparently unfruitful prices, in order by driving competition away to reap a fuller harvest of profit in the future; and until the present argument at the bar it may be doubted whether ship-owners or merchants were ever deemed to be bound by law to conform to some imaginary "normal" standard of freights or prices, or that law courts had a right to say to them in respect of their competitive tariffs, "Thus far shalt thou go, and no further." To attempt to limit English competition in this way would probably be as hopeless an endeavor as the experiment of King Canute. But on ordinary principles of law no such fetter on freedom of trade can in my opinion be warranted. A man is bound not to use his property so as to infringe upon another's right. *Sic utere tuo ut alienum non lædas.* If engaged in actions which may involve danger to others, he ought, speaking

generally, to take reasonable care to avoid endangering them. But there is surely no doctrine of law which compels him to use his property in a way that judges and juries may consider reasonable: see Chasemore v. Richards.[1] If there is no such fetter upon the use of property known to the English law, why should there be any such a fetter upon trade?

It is urged, however, on the part of the plaintiffs, that even if the acts complained of would not be wrongful had they been committed by a single individual, they become actionable when they are the result of concerted action among several. In other words, the plaintiffs, it is contended, have been injured by an illegal conspiracy. Of the general proposition, that certain kinds of conduct not criminal in any one individual may become criminal if done by combination among several, there can be no doubt. The distinction is based on sound reason, for a combination may make oppressive or dangerous that which if it proceeded only from a single person would be otherwise, and the very fact of the combination may show that the object is simply to do harm, and not to exercise one's own just rights. In the application of this undoubted principle it is necessary to be very careful not to press the doctrine of illegal conspiracy beyond that which is necessary for the protection of individuals or of the public; and it may be observed in passing that as a rule it is the damage wrongfully done, and not the conspiracy, that is the gist of actions on the case for conspiracy: see Skinner v. Gunton;[2] Hutchins v. Hutchins.[3] But what is the definition of an illegal combination? It is an agreement by one or more to do an unlawful act, or to do a lawful act by unlawful means: O'Connell v. The Queen;[4] Reg. v. Parnell;[5] and the question to be solved is whether there has been any such agreement here. Have the defendants combined to do an unlawful act? Have they combined to do a lawful act by unlawful means? A moment's consideration will be sufficient to show that this new inquiry only drives us back to the circle of definitions and legal propositions which I have already traversed in the previous part of this judgment. The unlawful act agreed to, if any, between the defendants must have been the intentional doing of some act to the detriment of the plaintiffs' business without just cause or excuse. Whether there was any such justification or excuse for the defendants is the old question over again, which, so far as regards an individual trader, has been already solved. The only differentia that can exist must arise, if at all, out of the fact that the acts done are the joint acts of several capitalists, and not of one capitalist only. The next point is whether the means adopted were unlawful. The means adopted were competition carried to a bitter end. Whether such means were unlawful is in like manner nothing but the old discussion which I have gone through, and which is now revived under a second head of inquiry, except so far as a combination of capitalists differentiates the

[1] 7 H. L. C. 349.
[2] 1 Wms. Saund. 229.
[3] 7 Hill's New York Cases, 104; Bigelow's Leading Cases on Torts, 207.
[4] 11 Cl. & F. 155.
[5] 14 Cox, Criminal Cases, 508.

case of acts jointly done by them from similar acts done by a single man of capital. But I find it impossible myself to acquiesce in the view that the English law places any such restriction on the combination of capital as would be involved in the recognition of such a distinction. If so, one rich capitalist may innocently carry competition to a length which would become unlawful in the case of a syndicate with a joint capital no larger than his own, and one individual merchant may lawfully do that which a firm or a partnership may not. What limits, on such a theory, would be imposed by law on the competitive action of a joint-stock company limited, is a problem which might well puzzle a casuist. The truth is, that the combination of capital for purposes of trade and competition is a very different thing from such a combination of several persons against one, with a view to harm him, as falls under the head of an indictable conspiracy. There is no just cause or excuse in the latter class of cases. There is such a just cause or excuse in the former. There are cases in which the very fact of a combination is evidence of a design to do that which is hurtful without just cause — is evidence — to use a technical expression — of malice. But it is perfectly legitimate, as it seems to me, to combine capital for all the mere purposes of trade for which capital may, apart from combination, be legitimately used in trade. To limit combinations of capital, when used for purposes of competition, in the manner proposed by the argument of the plaintiffs, would, in the present day, be impossible — would be only another method of attempting to set boundaries to the tides. Legal puzzles which might well distract a theorist may easily be conceived of imaginary conflicts between the selfishness of a group of individuals and the obvious well-being of other members of the community. Would it be an indictable conspiracy to agree to drink up all the water from a common spring in a time of drought; to buy up by preconcerted action all the provisions in a market or district in times of scarcity: see Rex *v.* Waddington;[1] to combine to purchase all the shares of a company against a coming settling-day; or to agree to give away articles of trade gratis in order to withdraw custom from a trader? May two itinerant match-vendors combine to sell matches below their value in order by competition to drive a third match-vendor from the street? In cases like these, where the elements of intimidation, molestation, or the other kinds of illegality to which I have alluded are not present, the question must be decided by the application of the test I have indicated. Assume that what is done is intentional, and that it is calculated to do harm to others. Then comes the question, Was it done with or without "just cause or excuse?" If it was *bona fide* done in the use of a man's own property, in the exercise of a man's own trade, such legal justification would, I think, exist not the less because what was done might seem to others to be selfish or unreasonable: see the summing-up of Erle, J., and the judgment of the Queen's Bench in Reg.

[1] 1 East, 143.

v. Rowlands.[1] But such legal justification would not exist when the act was merely done with the intention of causing temporal harm, without reference to one's own lawful gain, or the lawful enjoyment of one's own rights. The good sense of the tribunal which had to decide would have to analyze the circumstances and to discover on which side of the line each case fell. But if the real object were to enjoy what was one's own, or to acquire for one's self some advantage in one's property or trade, and what was done was done honestly, peaceably, and without any of the illegal acts above referred to, it could not, in my opinion, properly be said that it was done without just cause or excuse. One may with advantage borrow for the benefit of traders what was said by Erle, J., in Reg. v. Rowlands,[2] of workmen and of masters: "The intention of the law is at present to allow either of them to follow the dictates of their own will, with respect to their own actions, and their own property; and either, I believe, has a right to study to promote his own advantage, or to combine with others to promote their mutual advantage."

Lastly, we are asked to hold the defendants' Conference or association illegal, as being in restraint of trade. The term "illegal" here is a misleading one. Contracts, as they are called, in restraint of trade, are not, in my opinion, illegal in any sense, except that the law will not enforce them. It does not prohibit the making of such contracts; it merely declines, after they have been made, to recognize their validity. The law considers the disadvantage so imposed upon the contract a sufficient shelter to the public. The language of Crompton, J., in Hilton v. Eckersley,[3] is, I think, not to be supported. No action at common law will lie or ever has lain against any individual or individuals for entering into a contract merely because it is in restraint of trade. Lord Eldon's equity decisions in Cousins v. Smith[4] is not very intelligible, even if it be not open to the somewhat personal criticism passed on it by Lord Campbell in his "Lives of the Chancellors." If indeed it could be plainly proved that the mere formation of "conferences," "trusts," or "associations" such as these were always necessarily injurious to the public — a view which involves, perhaps, the disputable assumption that, in a country of free trade, and one which is not under the iron *régime* of statutory monopolies, such confederations can ever be really successful — and if the evil of them were not sufficiently dealt with by the common law rule, which held such agreements to be void as distinct from holding them to be criminal, there might be some reason for thinking that the common law ought to discover within its arsenal of sound common-sense principles some further remedy commensurate with the mischief. Neither of these assumptions are, to my mind, at all evident, nor is it the province of judges to mould and stretch the law of conspiracy in order to keep pace with the calculations of political economy. If peaceable and honest combinations of capital for purposes of

[1] 17 Q. B. 671.
[2] 17 Q. B. 671, at. p. 687, n.
[3] 6 E. & B. 47.
[4] 13 Ves. 542.

trade competition are to be struck at, it must, I think, be by legislation, for I do not see that they are under the ban of the common law.

In the result, I agree with Lord Coleridge, C. J., and differ, with regret, from the Master of the Rolls. The substance of my view is this, that competition, however severe and egotistical, if unattended by circumstances of dishonesty, intimidation, molestation, or such illegalities as I have above referred to, gives rise to no cause of action at common law. I myself should deem it to be a misfortune if we were to attempt to prescribe to the business world how honest and peaceable trade was to be carried on in a case where no such illegal elements as I have mentioned exist, or were to adopt some standard of judicial "reasonableness," or of "normal" prices, or "fair freights," to which commercial adventurers, otherwise innocent, were bound to conform.

In my opinion, accordingly, this appeal ought to be dismissed with costs. *Appeal dismissed.*

WEST VIRGINIA TRANSPORTATION CO. *v.* STANDARD OIL CO.

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA, 1901.

[*Reported* 40 *S. E. Rep.* 591.]

BRANNON, J. The West Virginia Transportation Company brought trespass on the case in Wood County against the Standard Oil Company and the Eureka Pipe Line Company, all corporations, and upon demurrer to the declaration judgment was rendered for the defendants. The first count of the declaration charges that the plaintiff was engaged in the business of transporting petroleum oils by means of pipe lines and tank cars from Volcano and vicinity to Parkersburg, and in storing oil, and had expended $300,000 in acquiring land, rights of way, lines of tubing, and other things necessary in its business, and had built up a large and lucrative business, and that the defendants maliciously and wickedly contriving and intending to injure the plaintiff and ruin its business, and render its plant and property worthless, and deprive it of all its business, did confederate and conspire together and with the West Virginia Oil Company, another corporation, and with C. H. Shattuck and other persons unknown to the plaintiff, to prevent all persons producing, refining, selling, or transporting oils, and particularly to prevent the plaintiff from transporting oils through its pipe lines and by means of its tank cars, and from storing oil in

its storage tanks, and from executing any lawful trade in connection therewith. And it charged also that the Standard Oil Company of New Jersey organized about 1891, and was the successor of all corporations and firms prior to that date associated together under a contract known as the Standard Oil Trust; that the Camden Consolidated Oil Company was a member of the said trust, and under its control; that in 1892 the business and property of said trust were reorganized under, and are now controlled by, the Standard Oil Company, and controlled by the same men formerly owning and controlling said Standard Oil Trust; that the Eureka Pipe Line Company is owned, controlled, and operated by the same men, and doing business in the interest of the Standard Oil Company, and is a transportation branch of that company; that the West Virginia Oil Company was organized about 1885 to purchase and operate what was known as the property of the West Virginia Oil and Land Company, a territory on which the plaintiff had laid pipe lines, and from which it had for several years transported oil for compensation; that the Standard Oil Trust, through individuals interested in it, had become a large stockholder in the West Virginia Oil Company, and dictated its management; and by means thereof, and of its monopoly of the production, refining, and transportation of oil throughout the world, practically controlled the business of said West Virginia Oil Company, and since the reorganization of the Standard Oil Trust by the organization of the Standard Oil Company had continued to do so, and had induced the construction of the Eureka Pipe Line Company, and thus ruined the business of the plaintiff; that this was the object and accomplishment of the said combination and malicious conspiracy.

What wrongful acts does this first count state? The formation of trade combination — call it "monopoly" — is not actionable alone. How far the grant of exclusive privilege by the state (and this is the only monopoly, legally speaking) is valid when its right is contested, is one thing. We are not dealing with that. This monopoly is not that. It is the act of persons and corporations, by union of means and effort, drawing to themselves, in the field of competition, the lion's share of trade. This is not monopoly condemned by law. The lion has stretched out his paws and grabbed in prey more than others, but that is the natural right of the lion in the field of pursuit and capture. Pity that the lion exists, his competing animals may say; but natural law accords the right, it is given him by the Maker for existence. The state made the Standard Oil Company, and gave it this right of being and working. Better for its competitors were it not so. What other acts besides the formation of this engrossing association does the first count charge? That it caused the West Virginia Oil Company to build a pipe line from its property to the Baltimore & Ohio Railroad to ship its oil to the refinery of the Standard Oil Company. Stockholders in the one were also in the other. Had they not the right to build this line to further their own interests, to convey product of the

one for refinement by another? A man owning a farm, and also interested in a mill; may not the mill owners induce the farmer to build some means of transporting his wheat to that mill, without being liable to suit by a man owning a railroad which had been accustomed to carry wheat from that farm? And suppose there were no common interest in the farm and mill, cannot the mill owners induce this farmer to build a means of transport from his farm to their mill? Is this soliciting trade by any usual means a legal wrong to competitors? The gravest item under this head is the charge that the Standard Company required oil producers (without specifying any but the West Virginia Oil Company), as a condition precedent to purchasing their oil, to ship through said pipe line, and required those producers in the land of the West Virginia Oil Company to do so as a condition precedent to holding their leases, notwithstanding that the more usual and satisfactory route of transport was the pipe line of the plaintiff; and that later the defendants, through the Eureka Pipe Line Company, to further accomplish their purpose of ruining the plaintiff, built a branch pipe line through territory which had for years patronized the plaintiff's line, in order to prevent and forestall the plaintiff from transacting, acquiring, or maintaining any business, and from extending its line to any other territory; and that the defendants and confederates, by their monopoly and control over the oil business, refused to ship, or permit others to ship, oils, or buy oils shipped through the plaintiff's line, and, being the only refiners of oil at Parkersburg and elsewhere, refused to buy oil shipped through the pipe line of the plaintiff. At first blush this conduct might appear wrong; but a second thought again presents the question whether the defendants in this did anything unlawful. The defendant companies were all in common interest. Could they not unite to further their interests? Could not the Standard Oil Company buy from whom it chose? And within the pale of this right could it not impose such conditions as it chose? Cannot the village merchant say to the farmer, "I will not buy your eggs unless you buy my calico?" Cannot the big mill owner refuse to buy wheat from those who do not ship it over a railroad or steamboat line owned by him? Cannot the mill owner refuse to lease his farm to those who do not sell products to his mill? He may be exacting and oppressive, but can other mill owners sue him for this? Is this right not a part and parcel of his business right? It is the right, even when there is no common ownership, as there is in this case, of one man to buy of whom he chooses; and he can impose arbitrary, hard conditions, if the other party chooses to accede to them. So it is the clear right of the other party to sell to whom he chooses, and he having this right, how does the other party do a wrong in purchasing from him? The right of the one carries with it the right of the other. These producers of oil had the right to sell to whom they chose, to ship their oil by what pipe line they chose, and they had the right to submit to the terms of the Standard Oil Com-

pany, and in view of this right the company could buy from whom it chose, and on such terms as it chose; for the right of the former would bear no fruitage, would be futile, without the corresponding right of contract in the company. Observe the question here is not one of enforcing a contract in favor of a monopoly, or of determining whether its conditions are reasonable; not a question of how far the courts would go to enforce a contract between the Standard Oil Company and producers, or between the Eureka Company and producers binding the latter to transport oil only over that line; not a proceeding by the state to forfeit a charter for misuse. The question here is, has the company, by illegal act, violated the rights of the plaintiff? Counsel for plaintiff put emphasis on the charge of conspiracy and malice; but there can be no conspiracy to do a legitimate act, — an act which the law allows, — nor malice therein. To give action there must not only be conspiracy, but conspiracy to do a wrongful act. If the act is lawful, no matter how many unite to do it. *Bohn Mfg. Co.* v. *Northwestern Lumbermen's Ass'n*, (Minn.) 55 N. W. 1119, 21 L. R. A. 337, 40 Am. St. Rep. 319. "A conspiracy cannot be made the subject of an action, though damages result, unless something is done which, without the conspiracy, would give right of action. The true test as to whether such action will lie is whether the act accomplished after the conspiracy is formed is itself actionable." *Delz* v. *Winfree*, 80 Tex. 400, 16 S. W. 111, 26 Am. St. Rep. 755. An agreement to get trade into your own hands, — that being the sole purpose, — though it harm others, is not actionable. *Steamship Co.* v. *McGregor*, 21 Q. B. Div. 544, 23 Q. B. Div. 598; *Huttley* v. *Simmons*, [1898] 1 Q. B. Div. 181. The case cited by counsel (*Morris Run Coal Co.* v. *Barclay Coal Co.*, 68 Pa. 173, 8 Am. Rep. 159) was a combination of coal companies to enhance prices to the public. So *People* v. *Sheldon*, 139 N. Y. 251, 34 N. E. 785, 23 L. R. A. 221, 36 Am. St. Rep. 690, and *People* v. *Milk Exchange*, (N. Y.) 39 N. E. 1062, 27 L. R. A. 437, 45 Am. St. Rep. 609, involved right of a corporation to fix prices of milk, and it was declared against public policy, so as to forfeit charter. *Jackson* v. *Stanfield*, (Ind. Sup.) 36 N. E. 345, 37 N. E. 14, 23 L. R. A. 588, comes nearer the point, though it, too, has in it the element of an agreement harmful to the public, and is not a case where owners of property and business, as here, seek to further their interests by inducing others to trade with them and not with competitors. There it was a pure agreement to compel others not to deal with a party (a boycott), not, as in this instance, to compel persons to deal with the defendants. *State* v. *Standard Oil Co.*, 49 Ohio St. 137, 30 N. E. 279, 15 L. R. A. 145, 34 Am. St. Rep. 541, was an agreement to control production and prices against the public interests, and was a proceeding by the state to withdraw a charter, not an action by an individual on the theory of private injury. I do not say that an individual damaged by a combination against public policy and law cannot sue. I say he can. In

Bohn Mfg. Co. v. *Northwestern Lumbermen's Ass'n*, (Minn.) 55 N. W. 1119, 21 L. R. A. 337, 40 Am. St. Rep. 319, it is held that "any man, unless under contract obligation, or unless his employment charges him with some public duty, has right to refuse to work for or deal with any man or class of men, as he sees fit; and this right, which one man may exercise singly, any number may exercise jointly." The wholesale merchants refuse to deal with consumers in favor of retail dealers. Can we consumers sue them? "He may refuse to deal with any man or class of men. It is no crime for any number of persons, without any unlawful object in view, to associate and agree that they will not work for or deal with certain men, or classes of men, or work under a certain price, or without certain conditions." *Carew* v. *Rutherford*, 106 Mass. 1, 14, 8 Am. Rep. 287. The great Chief Justice Shaw said that the legality of the association depends upon its object, and whether it be innocent or otherwise. *Com.* v. *Hunt*, 38 Am. Dec. 346. The law allows men to combine to obtain a lawful benefit to themselves. Greenh. Pub. Pol. 651. In *Olive* v. *Van Patten*, 7 Tex. Civ. App. 630, 25 S. W. 428, while condemning the particular act involved in that case, the court declared the right to compete, though it injured the plaintiff. "This would be legitimate. They could do this without responsibility for injurious consequence to the plaintiff's business; but they could not, without some legal purpose directly serving their own business, maliciously induce others not to trade with the plaintiff." Who can say that the acts attributed to the defendants did not benefit them? Had they done these acts to benefit strangers, from malice, it would be different. Now, these companies were furthering their own interests in lawful competition with others. If they possessed the lawful right above stated, what matters it that they did have the intent to cut down the business of others, or that they did cut it down and injure others, though they did this that they might themselves fatten? So far this first count charges only the exercise by the defendants of a right of constitutional liberty, accorded alike to all, — simply the right of self-advancement in legitimate business, self-preservation, we may say. That in these days of sharp, ruinous competition some perish is inevitable. The dead are found strewn all along the highways of business and commerce. Has it not always been so? Will it always be so? The evolution of the future must answer. What its evolution will be in this regard we do not yet know, but we do know that thus far the law of the survival of the fittest has been inexorable. Human intellect — human laws — cannot prevent these disasters. The dead and wounded have no right of action from the working of this imperious law. This is a free country. Liberty must exist. It is for all. This is a land of equality, so far as the law goes, though some men do in lust of gain get advantage. Who can help it?

We reverse and remand.

GLAMORGAN COAL CO., LTD., AND OTHERS v. THE SOUTH WALES MINERS FEDERATION AND OTHERS.

IN THE KING'S BENCH DIVISION, 1902.

[*Reported* 17 *Times Law Reports*, 810.[1]]

THE defendants published the following manifesto: "To the workmen employed in the South Wales and Monmouthshire collieries. It having come to the knowledge of your representatives upon the Sliding Scale Committee that large contracts have already been made at considerably lower prices than the average price declared by the last sliding scale audit, and fearing in consequence a heavy reduction of wages, it was unanimously resolved that in order to restore prices to their former level that the workmen shall observe as a general holiday Friday and Saturday." The result of this was that the men stayed away from work on those days, and so broke their contracts with their masters. Action by the employers against the employees for damages for having wrongfully and maliciously induced breach of contract of service; and in the alternative for having wrongfully and maliciously conspired to do the acts complained of.

BINGHAM, J. An actionable conspiracy exists when a number of men combine either to do an unlawful act or to do a lawful act by unlawful means. I have already said that in my opinion the acts of the individual defendants were lawful (because the acts in the present case were done with justification for the advancement of the best interests of the men), and there is good authority for saying that a combination entered into for the mere purpose of doing a lawful act cannot constitute an actionable conspiracy. My judgment, therefore, must be for the defendants upon both branches of the plaintiffs' complaint.

COMBINATION LEGITIMATE. — *Rigby* v. *Carrol*, L. R. 14 Ch. D. 482; *Lyon* v. *Wilkins*, 67 L. J. Ch. 383; *Collins* v. *Locke*, L. R. 7 A. C. 674; *Ontario Co.* v. *Merchants Co.*, 18 Gr. Ch. 546; *Gibbs* v. *McNeely*, 102 Fed. 594; *Hopkins* v. *U. S.*, 171 U. S. 578; *Herriman* v. *Menzies*, 115 Cal. 16; *Jones* v. *Fell*, 5 Fla. 510; *C.* v. *Hunt*, 4 Met. 111; *Bohn Co.* v. *Hollis*, 54 Minn. 223; *Cummings* v. *Ass'n*, 170 N. Y. 315; *Meyer* v. *Stone Cutters*, 48 N. J. Eq. 519; *Live Stock Association* v. *Levy*, 54 N. Y. S. 32; *Reynolds* v. *Everett*, 144 N. Y. 189; *Ladd* v. *Press*, 53 Tex. 172; *Kellogg* v. *Larkin*, 3 Pin. 123. — ED.

[1] Only one point is printed. — ED.

B. Coercion of the Market.

(1) *Boycott.*

CASE OF THE ABBOT OF LILLESHALL.

Before the Justices in Eyre, 1225.

[*Reported* 1 *Pleas of the Crown*, 125.]

The abbot of Lilleshall complains that the bailiffs of Shrewsberry do him many injuries against his liberty, and that they have caused proclamation to be made in the town that none be so bold as to sell any merchandise to the abbot or his men, upon pain of forfeiting ten shillings, so that Richard, the bedell of the said town, made this proclamation by their orders. And the bailiffs defend all of it, and Richard likewise defends all of it, and that he never heard such proclamation made by any one. It is considered that he do defend himself twelve handed, and do come on Saturday with his law.

REX v. BYKERDIKE.

Spring Assizes, 1832.

[*Reported* 1 *Moo. & Rob.* 179.]

Indictment for Conspiracy: — Jones was an owner of the Fairbottom colliery, Garforth was agent for the colliery. Seven colliers had been summoned before a magistrate by Garforth for refusing to work. It appeared that this was done at their own request, as they were afraid to work except under the appearance of being compelled to do so. The body of the other men met having taken certain oaths, and agreed upon a letter addressed to Garforth, to the effect, that all workmen in Garforth's employ would "strike in fourteen days, unless the seven men were discharged from the colliery." The letter concluded, "By order of the board of directors for the body of coal miners, Fairbottom Colliery."

Patteson, J., told the jury, that a conspiracy to procure the discharge of any of the workmen would support the indictment, which did not necessarily lay the intent as to all the workmen: and, if it did, that it was still a question whether the facts would not have proved it as to *all*. Further, that the statute never meant to empower workmen to meet and combine for the purpose of dictating to the master whom he should employ; and that this compulsion was clearly illegal.

The defendant was convicted.

CRUMP *v.* COMMONWEALTH.

IN THE SUPREME COURT OF VIRGINIA, 1888.

[*Reported* 84 *Va.* 927.[1]]

FAUNTLEROY, J. The evidence in this case shows that, while Baughman Brothers were engaged in their lawful business, as stationers and printers, the plaintiff in error and the other members of the Richmond Typographical Union, No. 90, *conspired* to compel Baughman Brothers to make their office a "union office," and to compel them not to employ any printer who did not belong to the said union; that upon the refusal of Baughman Brothers to make their office (or business) a "union office," the plaintiff in error and others composing the said Richmond Typographical Union, No. 90, conspired and determined to *boycott* the said firm of Baughman Brothers, as they had threatened to do, and sent circulars to a great many of the customers of the said firm, informing them that they had, "with the aid of the Knights of Labor, and all the trades' organizations in this city (Richmond), boycotted the establishment of Messrs. Baughman Brothers;" and, formally, notifying the said customers, that the names of all persons who should persist in trading, patronizing, or dealing with Baughman Brothers, after being notified of the *boycott*, would be published weekly in the "*Labor Herald*" as a "*black list*," who, in their turn, would be *boycotted* until they agreed to withdraw their patronage from Baughman Brothers; and, accordingly, the employees of Baughman Brothers were mercilessly hounded by publication after publication, for months, in the "*Labor Herald*" (which was the boasted engine of the boycotting conspirators), whereby it was attempted to excite public feeling against them and prevent them from obtaining even board and shelter; and the names of the customers and patrons of the said firm were published in the said sheet under the standing head of "*black list.*"

The length of this opinion will preclude the mention of even a tithe of these incendiary publications, week after week for months; but not only Baughman Brothers and their employees and their customers, but the hotels, boarding-houses, public schools, railroads, and steamboats conducting the business, travel, and transportation of the city, were listed and published under the obloquy and denunciation of the "black list." One or two specimens will suffice: "*Boycott* Baughman Brothers and all who patronize them." "Watch out for Baughman Brothers' '*rats*,' and find out where they board. It is dangerous for honest men to board in the same house with these creatures. They are so mean that the air becomes contaminated in which they breathe." "Boycott Baughman Brothers every day in the week." "Boycott Baughman Brothers because they are enemies of honest labor." "Boycott Baughman Brothers' customers wherever

[1] This case is abridged. — ED.

55 Connecticut 46

you find them." "The Lynchburg boys will begin to play their hand on Messrs. Baughman's boycotted goods in a short time. The battle will not be fought in Richmond only, but in all Virginia and North Carolina will be raised the cry, 'Away with the goods of this tyrannical firm.'" "Let our friends remember it is the patronage of the Chesapeake and Ohio; Richmond, Fredericksburg, and Potomac; Richmond and Danville, and Richmond and Alleghany railroads that is keeping Baughman Brothers up." "We are sorry to see the Exchange Hotel on the black list. There will be two thousand strangers in this city in October — none of whom will patronize a hotel or boarding-house *whose name appears on that list.*" "The boycott on Baughman Brothers is working so good, that a man cannot buy a single bristol-board from the *rat* firm without having his name put upon the *black list.*" "The old 'rat' establishment is about to cave in. Let it fall with a crash that will be a warning to all enemies of labor in the future."

It was proved that the conspirators declared their set purpose and persistent effort to "*crush*" Baughman Brothers; that the minions of the boycott committee dogged the firm in all their transactions; followed their delivery wagon; secured the names of their patrons; and used every means, short of actual physical force, to compel them to cease dealing with Baughman Brothers — thereby causing them to lose from one hundred and fifty to two hundred customers and ten thousand dollars of net profit. The acts alleged and proved in this case are unlawful, and incompatible with the prosperity, peace, and civilization of the country; and, if they can be perpetrated with impunity, by combinations of irresponsible cabals or cliques, there will be the end of government, and of society itself. Freedom — *individual* and *associated* — is the boon and the boasted policy and peculium of our country; but it is *liberty* regulated by *law;* and the motto of the law is: "*Sic utere tuo, ut alienum non lædas.*"

The plaintiff in error was properly convicted; and the judgment of the hustings court complained of is affirmed.

Judgment affirmed.

JOHN D. PARK & SONS CO. *v.* NATIONAL WHOLESALE DRUGGISTS' ASSOCIATION.

IN THE SUPREME COURT OF NEW YORK, 1896.

[*Reported* 50 *N. Y. Suppl.* 1064.]

APPLICATION by John D. Park & Sons Company against the National Wholesale Druggists' Association and others for an injunction. Injunction granted.

RUSSELL, J. Plaintiff seeks an injunction to restrain an alleged

combination which prevents it from obtaining proprietary medicines, thus crippling its business as a wholesale drug house. The Druggists' Association, defendant, is formed by the coöperation of a large number of wholesale druggists and manufacturers of proprietary medicines for mutual benefit and protection. Unquestionably, a part of its aim is to enable those within its scope to obtain prices which shall yield fair profits, and, in so doing, it acts under rules understood by the associates as well as those expressed. A large part of its line of action, as evidenced by its formal articles of agreement, is unquestionably lawful, as is also a great part of the individual action of the firms entering into the combined association. As an association, it is lawful for the association and the manufacturers to provide means for obtaining information as to the acts of firms violating any proper agreement in regard to the sale of proprietary drugs by any of the associates or the customers of such associates. It is also lawful for the manufacturers individually to agree with their customers that those customers shall sell the particular goods manufactured by the vendor for a certain price, so far, at least, as not to render the manufacturer liable to third parties for doing an unlawful act, however much doubt there may be as to such manufacturers being able to enforce an executory agreement of this kind by proper legal proceeding. It is lawful, also, for each manufacturer to refuse to sell to any customer, for any reason, however capricious, any goods manufactured by him. But it is in restraint of trade and unlawful for such manufacturer to become a party to a combination which shall prevent any of his customers from obtaining other goods of other manufacturers because those customers violate the agreement with him in respect to a cutting of prices, and to make such violation a cause of a general exclusion of such customers from the power to purchase any kind of proprietary medicines from any of the other members of the association. It is not lawful to form a combination which shall make general the enforcement of prices fixed by the manufacturer effective, beyond the reach of competition, by the exclusion of such customers from a general power of purchase of other goods. In the present case, I am not ready to find, from the mass of documentary and other evidence furnished me, that all of the defendants, by means of the Druggists' Association, have combined themselves to carry out such an unlawful purpose; but there is in the affidavits and papers presented sufficient to justify the belief that some of the defendants, acting through the organization of the association, or under its policy as assumed by them, have gone beyond the limit which the association was justified in acting up to, and have used the power of the association to punish or exclude the plaintiff from its power to purchase. The evidence in this respect is not entirely satisfactory, and the more perfect method of a trial upon the issues presented, might entirely dissipate any such impression. I, therefore, withhold the expression of the details upon which the present impression is founded, and continue the injunction only substantially as follows: The defendants

are enjoined from conspiring or combining together, or with any other person or persons, to prevent the plaintiff from freely purchasing proprietary drugs and medicines or other goods, or from freely selling proprietary drugs and medicines or other goods to persons who may desire to purchase. But the defendants are not enjoined from obtaining or imparting information as to the manner in which the plaintiff conducts its business, or any violation of any agreement with any specific manufacturer or wholesale dealer, and neither of the defendants is enjoined from making any agreement with the plaintiff or any other person fixing the price of sale of his or its particular line of goods.

TEMPERTON *v.* RUSSELL AND OTHERS.

IN THE COURT OF APPEAL, APRIL 13, 14, 17, 1893.

[*Reported in Law Reports* (1893), 1 *Queen's Bench*, 715.]

APPLICATION by the defendants for judgment or new trial.

The plaintiff, a master mason and builder at Hull, sued the defendants, who were respectively the presidents and secretaries of three trade unions at Hull, called the Hull Branch of the Operative Bricklayers' Society, the Hull Branch of the Builders' Laborers' Society, and the Hull Branch of the Operative Plasterers' Society, and of a joint committee of such trade unions, and members of such committee, for (1) unlawfully and maliciously procuring certain persons who had entered into contracts with the plaintiff to break such contracts, and (2) for maliciously conspiring to induce certain persons not to enter into contracts with the plaintiff, by reason whereof the plaintiff sustained damage.

The case was tried before Collins, J., who directed the jury that to induce a person who had made a contract with another to break it, in order to hurt the person with whom it had been made, to hamper him in his trade, or to put undue pressure upon him, or to obtain an indirect advantage, was in point of law to do it maliciously, and that, if the jury were satisfied that the defendants or any of them had induced persons to break contracts with the plaintiff, of the existence of which they were aware, and, if their object in doing so was to injure the

plaintiff in his trade in order to compel him to do something which he did not want to do, that would be "maliciously" in point of law, and a cause of action would be established. He also directed the jury in substance, that a malicious conspiracy to prevent persons from entering into contracts with another, if followed by damage to the person conspired against, was actionable. He left the following questions to the jury: (1) Did the defendants or any of them maliciously induce the persons named (viz., Brentano, Gibson and others), or any of them, to break their contracts with the plaintiff? (2) Did the defendants, or any two or more of them, maliciously conspire to induce the persons named and others not to enter into contracts with the plaintiff, and were such persons thereby induced not to make such contracts? The jury found for the plaintiff, against all the defendants, on both heads, with £50 damages on the first and £200 damages on the second. The learned judge gave judgment for the plaintiff for those amounts, and for an injunction to restrain the defendants from inducing persons to refuse to take goods from the plaintiff, or endeavoring to induce persons to break their contracts with the plaintiff. The defendants moved for judgment or a new trial, on the ground that the learned judge misdirected the jury, and that there was no evidence to go to the jury in support of the plaintiff's claim against the defendants respectively.[1]

Robson, Q. C., and *H. T. Kemp*, for the defendants Russell and another (president and secretary of the Operative Bricklayers' Society).

E. Tindal Atkinson, Q. C., and *T. Willes Chitty*, (*F. G. Newbolt*, with them), for the other defendants.

Lawson Walton, Q. C., and *Montague Lush*, for the plaintiff.

LORD ESHER, M. R. In this case I propose first to state the facts of the case, as I understand the effect of the evidence, and then my views as to the law applicable to those facts. There appear to have been three trade unions formed in Hull, consisting respectively of persons employed in each of the three branches of labor connected with the building trade there. The members of such trade unions respectively agree together to form a union, to subscribe certain amounts, and to subject themselves to certain obligations, in consideration of which they are respectively to be entitled to certain benefits. The main condition upon which the members of the union are to be entitled to the benefits of membership is, that they will obey the directions given with regard to certain trade matters by the persons authorized by all of the members to give such directions. If they do not, they may be deprived of the benefits to which they would otherwise have been entitled or expelled from the union. Therefore the members of the union have given up their liberty of action in respect of certain matters, in the sense that they have bound themselves by agreement not

[1] The statement of the evidence is omitted, being substantially given in the opinion of LORD ESHER. The arguments of counsel and the concurring opinion of A. L. SMITH, L. J., are also omitted, and the opinion of LOPES, L. J., is abridged. — ED.

to exercise it on pain of losing certain benefits. These trade unions appear to have agreed together that certain rules, which they thought to be for their benefit, should be observed by the master builders of Hull, and that, if any builder would not observe such rules, they would act upon their respective members with a view to compelling him to do so. For this purpose they formed a joint committee, which appears to have been the authority appointed to determine what action should be taken by the individual members of the trade unions in respect of such building controversies, and, therefore, to have been for this purpose the agent of each of the trade unions, and of the individual members of them. Apparently this committee had power to delegate their authority to one or more individual members. I think that the evidence in this case proves that they did delegate such authority to the defendant Russell, who therefore acted in what he did as the delegate of such committee, and so of each of the three unions, and in a sense of each member of them. He, therefore, had authority to give directions to the individual members of the unions what to do in the case of building controversies. The trade unions and the joint committee seem to have come to the conclusion that a certain mode of carrying on building operations in Hull was detrimental to their interests or those of their constituents. They therefore agreed, as I have said, to a set of rules, one of which was the 9th rule[1] which has been referred to. As between themselves, the members of these trade unions had a perfect right to do that and to bind themselves to comply with such rules. But these rules could not bind any person who did not belong to such unions, and they had no right to enforce obedience to them by such a person. A firm of Myers & Temperton, who were builders in Hull, thought fit to carry on their business, as they had a perfect right to do, in a manner inconsistent with the terms of rule 9. The trade unions and their joint committee objected to this, and resolved to coerce the firm into carrying on their business in accordance with the rule. Failing to effect their object by direct action upon the firm, they endeavored to coerce them through the persons who dealt with them and who supplied them with the means of carrying on their business. Among these persons was the plaintiff, a brother of one of the members of the firm. They desired to coerce the firm by preventing these persons from dealing with them. The plaintiff refused to fall in with these views, and would not agree to cease dealing with his brother's firm. Having failed in preventing him from doing so by direct action upon him, they desired to overcome his resistance and to coerce him, in the same manner as

[1] This rule provided "that no member of the Operative Bricklayers' Society shall be permitted, under any circumstances, to contract for or take by measurement, either in the whole or part, any kind of brickwork, brick-pointing, or plastering, that may have been contracted for or sub-contracted for under the original contract, nor to take any work of any master builder who is building property for himself; and that no member of this society shall be allowed to work on such jobs; that no member of these societies be allowed to work on any job where labor alone is contracted for."

they had sought to coerce the firm, viz., through the persons who had dealings with him. The joint committee in effect said that, if any person connected with the building trade in Hull should deal with the plaintiff for materials, the members of the unions should refuse to work for that person upon goods supplied by the plaintiff. They intended thus to coerce the plaintiff to comply with their views, and they contemplated that, if he did not submit, his business would be destroyed. Though, of course, in point of law such other persons might be free to enter into contracts with the plaintiff, and would be bound to perform contracts made with him, as before, in point of fact the committee knew that the probable result would be that his business would come to an end, and they thought that the prospect of this would have a strongly coercive effect upon him.

They were not, I think, actuated in their proceedings by spite or malice against the plaintiff personally in the sense that their motive was the desire to injure him, but they desired to injure him in his business in order to force him not to do what he had a perfect right to do. Amongst those who had dealings with the plaintiff were two persons named Brentano and Gibson. The result of the evidence appears to me to be that the joint committee and the defendant Russell, who was acting as the delegate of such committee, knew that Brentano had entered into a contract with the plaintiff, and also, I think, that he would in the course of his business enter in the future into other contracts with the plaintiff of a similar description. Russell lets Brentano know that, if he goes on dealing with the plaintiff, harm will come to him, because none of the workmen at Hull who are comprised in the unions will touch the materials supplied by the plaintiff or will do his work. What was said by Russell to Brentano, and the previous resolution of the committee which was made known to Brentano, clearly had the object of preventing him from carrying out the contract he had already made with the plaintiff, and I should say that the inference any fair-minded man would draw would be that they also had the object of preventing Brentano from entering into contracts with the plaintiff in the future. The object was not to injure Brentano, but to injure the plaintiff in his business, in order to force him into obedience to the views of the unions. It was argued that the steps which the joint committee and Russell, their representative, took with regard to the men working for Brentano were only what they had a perfect right to take, that they merely gave notice or advice to such workmen that the rules were being infringed, and that they should withdraw from his employment if he carried out his contract with the plaintiff, and that the workmen could then do as they liked in the matter. It may be spoken of as "notice" or "advice" argumentatively; but those words do not represent the truth of the thing. These men had bound themselves to obey; and they knew that they had done so, and that, if they did not obey, they would be fined or expelled from the union to which they belonged. It was really an order which was given to them just as much

as a direction given to a servant is one. It might be said that such a direction is not an order, because the servant could not be compelled to obey it; but, if he does not, he will lose his place. The unions through their joint committee, as it appears to me, ordered their members employed by Brentano to cease to work for him if he performed his contract with the plaintiff, or if he went on dealing with the plaintiff. I think that the meaning of what Russell said to Brentano was that, if he had made a contract with the plaintiff and proceeded to perform that contract, his men would leave him; and that, if he went on dealing with the plaintiff in the future, the same result would follow. The intention was that by so acting on Brentano the plaintiff should be compelled to obey their directions, and, if he did not, that his business should be ruined. I think that there was clearly evidence to go to the jury against all the defendants of having been parties to these transactions. They were all members of the unions and of the joint committee, and they none of them went into the box except Russell, which they would have done if they could have denied that they were parties to them. The evidence against the defendants with regard to the dealings with Gibson is substantially to the same effect. This is not simply a case of men saying that they will not work for a master if he does certain things which they do not like. Brentano and Gibson were dealt with thus for the purpose of injuring the plaintiff, in order to force him into obedience to the policy of the unions, which they had no right to impose upon him.

Then what is the law applicable to these facts? The questions of law were dealt with in the argument of the defendants' counsel boldly but briefly, the main bulk of their arguments being directed to the endeavor to make out that there was no evidence that the defendants were responsible for the matters complained of. It was argued that the action for inducing persons to break a contract is confined to cases of master and servant or cases of personal service. But the case of Bowen *v.* Hall shows that the distinction relied on is not tenable. That was not a case of master and servant. In that case the majority of the judges in the Court of Appeal approved of the view taken by the majority of the judges in Lumley *v.* Gye. Their judgment, after stating that merely to persuade a person to break his contract may not be wrongful in law or fact, proceeds as follows: "If the persuasion be used for the indirect purpose of injuring the plaintiff, or of benefiting the defendant at the expense of the plaintiff, it is a malicious act, which is in law and in fact a wrong act, and therefore a wrongful act, and therefore an actionable act, if injury ensues from it. We think that it cannot be doubted that a malicious act, such as is above described, is a wrongful act in law and in fact. The act complained of in such a case as Lumley *v.* Gye, and which is complained of in the present case, is therefore, because malicious, wrongful. That act is a persuasion by the defendant of a third person to break a contract existing between such third person and the plaintiff. It cannot be maintained that it is not a nat-

ural and probable consequence of that act of persuasion that the third person will break his contract. It is not only the natural and probable consequence, but, by the terms of the proposition which involves the success of the persuasion, it is the actual consequence." Nothing could be more directly in point to the present case with regard to the first ground of action set up. That case is an authority which is binding on us, and it appears to me to apply to the present case.

The next point is, whether the distinction taken for the defendants between the claim for inducing persons to break contracts already entered into with the plaintiff and that for inducing persons not to enter into contracts with the plaintiff can be sustained, and whether the latter claim is maintainable in law. I do not think that distinction can prevail. There was the same wrongful intent in both cases, wrongful because malicious. There was the same kind of injury to the plaintiff. It seems rather a fine distinction to say that, where a defendant maliciously induces a person not to carry out a contract already made with the plaintiff and so injures the plaintiff, it is actionable, but where he injures the plaintiff by maliciously preventing a person from entering into a contract with the plaintiff, which he would otherwise have entered into, it is not actionable. At any rate it appears to me that, on the principle acted on in the case of Gregory *v.* Duke of Brunswick, where defendants conspire or combine together maliciously to injure the plaintiff by preventing persons from entering into contracts with him, and injury results to the plaintiff, it is actionable. The judgments in the case of Mogul Steamship Co. *v.* Macgregor, Gow & Co.,[1] in the House of Lords, seem to show that such a combination if followed by damage to the plaintiff is actionable. With regard to what was there said, the counsel for the defendants relied on the distinction between an indictment and a civil action, and said that, though such a combination might be the subject of an indictment for conspiracy, it could not be the subject of an action for damages. I agree that there is this distinction, viz., that, in the case of an indictment, when the conspiracy is proved the indictment is proved, but in the case of an action it is necessary to go further and to prove damage. Therefore it will not suffice in an action, if the jury only find that the defendants agreed together to take an unlawful course of action, but they do not find that it was taken and that damage resulted to the plaintiff, or if there is no evidence on which the jury can find that damage resulted to the plaintiff. But, if there is evidence, and they do find, that damage resulted to the plaintiff, then I think what Lord Bramwell said in the case of Mogul Steamship Co. *v.* Macgregor, Gow & Co.[1] applies, and the action will lie. He said: "The plaintiffs also say that these things, or some of them, if done by an individual, would be actionable. This need not be determined directly, because all the things complained of have their origin in what the plaintiffs say is unlawfulness, a conspiracy to injure: so that, if actionable when done by one, much more are they

[1] [1892] A. C. 25.

when done by several, and, if not actionable when done by several, certainly they are not when done by one. It has been objected by capable persons that it is strange that that should be unlawful, if done by several, which is not if done by one, and that the thing is wrong if done by one, if wrong when done by several; if not wrong when done by one, it cannot be when done by several. I think there is an obvious answer, indeed two: one is that a man may encounter the acts of a single person, yet not be fairly matched against several; the other is that the act when done by an individual is wrong, though not punishable, because the law avoids the multiplicity of crimes: *De minimis non curat lex;* while if done by several it is sufficiently important to be treated as a crime." It seems to me that that language recognizes the doctrine of law as being that, if there is an agreement to take an unlawful course of action which amounts to a conspiracy, and that conspiracy causes damage to the plaintiff, an action will lie in respect of such conspiracy. It appears to me, therefore, that the combination here entered into by the defendants was wrongful both in respect of the interference with existing contracts and in respect of the prevention of contracts being entered into in the future. I cannot doubt that there was evidence from which the jury might find that people were prevented from dealing with the plaintiff by the resolution of the joint committee and the action taken by the defendants, and that the plaintiff was thereby injured, and it appears to me that the jury have so found. For these reasons I think this application must be refused.

LOPES, L. J. The case which I think must govern our decision as to the first head of claim is Bowen *v.* Hall, which I understand to lay down the broad principle that a person who induces a party to a contract to break it, intending thereby to injure another person or to get a benefit for himself, commits an actionable wrong. That appears to me to be the effect of the decision in that case, which was decided in 1881, and never appears to have been since questioned. I presume that the principle is this, viz., that the contract confers certain rights on the person with whom it is made, and not only binds the parties to it by the obligation entered into, but also imposes on all the world the duty of respecting that contractual obligation. That being the law on the subject, the jury found that the defendants did maliciously induce persons who had contracted with the plaintiff to break their contracts. It seems to me that there was abundant evidence to support that finding.

The second question in the case is with regard to inducing persons not to enter into contracts with the plaintiff. The question left to the jury as to that was, whether the defendants maliciously conspired to induce persons not to enter into contracts with the plaintiff, and such persons were thereby induced not to make such contracts. The jury answered that question in the affirmative. That being so, the question is whether, upon that finding, it is shown that the defendants committed an actionable wrong. I think that it is. I will state shortly what I

believe to be the law on the subject. The result of the authorities appears to me to be that a combination by two or more persons to induce others not to deal with a particular individual, or enter into contracts with him, if done with the intention of injuring him, is an actionable wrong if damage results to him therefrom. That appears to me to follow from what was said in Gregory *v.* Duke of Brunswick, and in the House of Lords in the case of Mogul Steamship Co. *v.* Macgregor, Gow & Co. It was argued here that there was no evidence that any persons were induced not to enter into contracts with the plaintiff. I cannot agree with that contention. I think there was sufficient evidence to that effect, and that injury was thereby occasioned to the plaintiff. For these reasons, I think that the verdict ought to stand, and this application should be dismissed. *Application dismissed.*

DELZ *v.* WINFREE AND OTHERS.

IN THE SUPREME COURT, TEXAS, MARCH 24, 1891.

[*Reported in* 80 *Texas*, 400.]

HENRY, *Associate Justice.*[1] This suit was brought to recover damages by Bernard Delz against the members of the firm of Winfree, Norman & Pearson, and the members of the firm of Borden & Borden.

Plaintiff's petition stated his cause of action as follows: That he was pursuing the occupation of a butcher in the city of Galveston, and was making and would have continued to make large profits and gains in the business but for the grievances committed by the defendants as alleged; that in the prosecution of his business he had opened and was conducting two butcher shops in said city for the sale of different kinds of fresh meat; that it became necessary that he should buy live animals suitable and fit to be slaughtered for the purposes of his business as a butcher, and for a long time before and at the time of the commission by defendants of the grievances herein stated he was engaged in the business of buying live animals suitable and fit to be slaughtered and sold as fresh butcher's meat, and which he slaughtered and sold as such at his said two butcher shops; that the persons from whom plaintiff bought said live animals were engaged in the business of transporting to Galveston and receiving for sale live animals suitable and fit to be slaughtered and sold as butcher's meat, and in selling such live animals for such purposes to whomsoever would buy; that long before and at the time of the commission by defendants of the wrongs herein charged the defendants were engaged, and are now engaged, as sepa-

[1] Opinion only is printed. — ED.

rate firms in said business of receiving and selling live animals for the purposes aforesaid on Galveston Island, and were and are now the only persons or association of persons so engaged in said business in Galveston County; that without justifiable cause and unlawfully, and with the malicious intent to molest, obstruct, hinder, and prevent plaintiff from carrying on his said business and making a living thereby, the said Winfree, Norman & Pearson, on or about the 1st day July, 1889, and at divers times thereafter, and until the filing of this petition, did combine, confederate, and conspire with said firm of Borden & Borden, and with one Gerhard Barbour, a butcher, not to sell to petitioner for cash any live animals or slaughtered meat for the purposes or for the prosecution of his said business; that the said Winfree, Norman & Pearson solicited and procured from said Borden & Borden an agreement not to sell any live animals to plaintiff, and did so induce said Gerhard Barbour and others to plaintiff unknown not to sell to him slaughtered meat for the purposes of his said business.

The petition charges that in pursuance of said combination each of said firms subsequently refused to sell plaintiff live animals when he applied to them to purchase them at their own price in money which he then offered to pay them, and that said Gerhard Barbour likewise refused to sell him slaughtered meat; that by reason of such unlawful combination and malicious interference with his business, plaintiff was compelled to close up and discontinue his business in one of his two shops, and in order to continue it at the other one of his shops he has been and is now forced to buy slaughtered meat at a great disadvantage and at higher prices than he would have had to pay but for the aforesaid unlawful combination and malicious interference with and hindrance of his business by defendants.

The court sustained a general demurrer to the petition.

Appellant's assignment of error brings before us the correctness of this ruling.

The appellee contends that at common law "a conspiracy cannot be made the subject of a civil action, although damages result, unless something is done which without the conspiracy would give a right of action. In other words an act which if done by one alone constitutes no ground of action cannot be made the ground of such action by alleging it to have been done by and through a conspiracy of several; that the true test as to whether such action will lie is whether or not the act accomplished after the conspiracy has been formed is itself actionable."

We think that the proposition here asserted is well sustained by the authorities, and the first question to be determined is whether, on account of the acts charged by plaintiff against the defendants, he would have had a cause of action against either of them if no conspiracy had been charged.

If he would have had, then he may maintain his action for a conspiracy. If he could not have sustained a separate action against

either of the defendants on account of the matters complained of, the additional charge of a conspiracy will not give it. Cool. on Torts, 125; Kimball v. Harmon & Burch;[1] Laverty v. Vanarsdale.[2]

The appellee also asserts the following proposition, which may be conceded to be correct: "A person has an absolute right to refuse to have business relations with any person whomsoever, whether the refusal is based upon reason or is the result of whim, caprice, prejudice, or malice, and there is no law which forces a man to part with his title to his property."

The privilege here asserted must be limited however to the individual action of the party who asserts the right. It is not equally true that one person may from such motives influence another person to do the same thing. If without such motive the cause of one person's interference with the property or privileges of another is to serve some legitimate right or interest of his own, he may do acts himself, or cause other persons to do them, that injuriously affect a third party so long as no definite legal right of such third party is violated.

In the case of Walker v. Cronin, it was recognized to be a general principle that, "in all cases where a man has a temporal loss or damage by the wrong of another, he may have an action upon the case to be repaired in damages. The intentional causing of such loss to another, without justifiable cause and with the malicious purpose to inflict it, is of itself a wrong.

"There are indeed many authorities which appear to hold that to constitute an actionable wrong there must be a violation of some definite legal right of the plaintiff. But those are cases, for the most part at least, where the defendants were themselves acting in the lawful exercise of some distinct right, which furnished the defence of a justifiable cause for their acts, except so far as they were in violation of a superior right in another.

"Thus every one has an equal right to employ workmen in his business or service; and if by the exercise of this right in such manner as he may see fit persons are induced to leave their employment elsewhere, no wrong is done to him whose employment they leave, unless a contract exists by which such other person has a legal right to the further continuance of their services. If such a contract exists, one who knowingly and intentionally procures it to be violated may be held liable for the wrong, although he did it for the purpose of promoting his own business.

"Every one has a right to enjoy the fruits and advantages of his own enterprise, industry, skill, and credit. He has no right to be protected against competition; but he has a right to be free from a malicious and wanton interference, disturbance, or annoyance. If disturbance or loss come as a result of competition, or the exercise of like rights by others, it is *damnum absque injuria*, unless some superior

[1] 34 Md. 407. [2] 65 Pa. St. 507.

right by contract or otherwise is interfered with. But if it come from the merely wanton or malicious acts of others, without the justification of competition or the service of any interest or lawful purpose, it then stands upon a different footing."

Plaintiff's petition goes further than to charge that each of the defendants refused to sell to him. It charges that they not only did that, but that they induced a third person to refuse to sell to him. It does not appear from the petition that their interference with the business of plaintiff was done to serve some legitimate purpose of their own, but that it was done wantonly and maliciously, and that it caused, as they intended it should, pecuniary loss to him.

We think the petition stated a cause of action and that the demurrer should have been overruled.

The judgment is reversed and the cause is remanded.

Reversed and remanded.

HUNDLEY *v.* LOUISVILLE & NASHVILLE RAILROAD CO.

IN THE COURT OF APPEALS OF KENTUCKY, 1898.

[*Reported* 48 *S. W. Rep.* 429.]

PAYNTER, J. It is averred in the petition as amended that the plaintiff has no trade or calling except railroading; that for the past

five years he has been in the employment of the defendant; that while engaged in the discharge of his duties he was wrongfully, unlawfully, and maliciously discharged by it; that it wrongfully, unlawfully, and maliciously blacklisted him; that he was blacklisted wrongfully, unlawfully, maliciously, and falsely by its placing upon its records a pretended cause of discharge, to wit, neglect of duty, with a view of injuring and preventing him from entering its employment or that of other railroad companies; that it had entered into a conspiracy and combination with other railroad companies by which its employés discharged for cause will not be given employment by other railroad companies; that, on account of its false and malicious acts and its conspiracy with other railroad companies, he has been deprived of the right to again engage in the employment of the defendant or other railroad companies; that the wrongful acts mentioned were committed for the purpose of making, and had made, it impossible for him to ever again get employment from the defendant on any of its lines, or from other railroad companies in the United States; and that he has been damaged thereby in the sum of $5000.

Our attention has not been invited to, nor have we been able to find, any reported case involving exactly the same question as is involved in this case. It is a novel question in this court, although there are reported cases of other courts the doctrine of which might be applied to this case. As the population of the country increases, as the business and commercial industries multiply, as inventive genius causes the civilized peoples of the world to marvel at its discoveries and productions, as space is annihilated by the means of rapid transit for man, commerce, thought, and sound, thus facilitating the conduct of business, the pursuit of occupations and callings, and the promotion of the social and political intercourse of the world, courts are called upon to apply familiar principles to new questions; if none seem to be applicable, to enunciate a just rule, suited to the state of facts before it and for future application to similar facts. It can never be said that the novelty of a complaint is an objection to the action, if it is made to appear that an injury has been inflicted of which the law is cognizable. The familiar maxim of the law, "*Ubi jus, ibi remedium*," is considered valuable by all courts. It was this maxim which caused the invention of the form of action called an "action on the case." It is the part of every man's civil rights to enter into any lawful business, and to assume business relations with any person who is capable of making a contract. It is likewise a part of such rights to refuse to enter into business relations, whether such refusal be the result of reason, or of whim, caprice, prejudice, or malice. If he is wrongfully deprived of these rights, he is entitled to redress. Every person *sui juris* is entitled to pursue any lawful trade, occupation, or calling. It is part of his civil rights to do so. He is as much entitled to pursue his trade, occupation, or calling, and be protected in it, as is the citizen in his life, liberty, and property. Whoever wrongfully prevents him from doing so, inflicts an actionable injury.

For every injury suffered by reason of a violent or malicious act done to a man's occupation, profession, or way of getting a livelihood, an action lies. Such an act is an invasion of legal rights. A man's trade, occupation, or profession may be injured to such an extent, by reason of a violent or malicious act, as would prevent him from making a livelihood. One who has followed a certain trade or calling for years may be almost unfitted for any other business. To deprive him of his trade or calling is to condemn, not only him, but perchance a wife and children, to penury and want. Public interests, humanity, and individual rights alike demand the redress of a wrong which is followed by such lamentable consequences. A railroad company has the right to engage in its service whomsoever it pleases, and, as part of its right to conduct its business, is the right to discharge any one from its service, unless to do so would be in violation of contractual relations with the employé. It is the duty of a railroad company to keep in its service persons who are capable of discharging their important duties in a careful and skilful manner. The public interest, as well as the vast property interests of the company, require that none other should be employed by it. Its duty in this regard and its right to discharge an employé does not imply the right to be guilty of a violent or malicious act, which results in the injury of the discharged employé's calling. The company has the right to keep a record of the causes for which it discharges an employé, but in the exercise of this right the duty is imposed to make a truthful statement of the cause of the discharge. If, by an arrangement among the railroad companies of the country, a record is to be kept by them of the causes of the discharge of their employés, and when they are discharged for certain causes the others will not employ them, it becomes important that the record kept should contain a true statement of the cause of an employé's discharge. A false entry on the record may utterly destroy and prevent him from making a livelihood at his chosen business. Such false entry must be regarded as intended to injure the discharged employé; therefore a malicious act. If it is the custom of the railroads of the country to keep such record, and that employés discharged for certain causes are not to be employed by them, then it enters into, and forms part of, every contract of employment that neither a false entry shall be made, nor one so made communicated, directly or indirectly, to any other railroad company. Suppose it was the custom of the railroads, when an employé was discharged without cause, to give him a card or statement to that effect, and if he did not have such card or statement he could not get employment with other railroad companies, then that custom would enter into every contract of employment; and if a company wrongfully refused to give it to the discharged employé, and in consequence of which refusal he was injured, a cause of action would lie for the damages sustained. For such breach of duty the employé could maintain an action *ex contractu* or *ex delicto*, at his option. 1 Add. Torts, 17, says: "A tort may be dependent upon, or independent of, contract.

If a contract imposes a legal duty upon a person, the neglect of that duty is a tort founded on contract; so that an action *ex contractu* for the breach of contract, or an action *ex delicto* for the breach of duty, may be brought, at the option of the plaintiff." It was one of the purposes of the common law to protect every person against the wrongful acts of every other person, and it did not matter whether they were committed by one person or by a combination of persons, and under it an action was maintainable for injuries done by disturbing a person in the enjoyment of any right or privilege which he had. It is said in Cooley, Torts, 278: "Thus, if one is prevented, by the wrongful act of a third party, from securing some employment he has sought, he suffers a legal wrong, provided he can show that the failure to employ him was the direct and natural consequence of the wrongful act." It is said in 1 Add. Torts, 14: "When a violent or malicious act is done to a man's occupation, profession, or way of getting a livelihood, there an action lies in all cases." The plaintiff does not seek to recover because he was discharged in violation of a contract which he had with the defendant. He does not allege that he had a contract with it to perform services for it for a given length of time. He seeks to recover damages for its alleged wrongful act in making the false entry upon its record against him, to prevent him from pursuing his calling by rendering it impossible for him to get employment from other railroad companies.

The petition does not state a cause of action against the defendant. The averments that he had been deprived of the "right" to again engage in the employment of other railroad companies, and that the alleged wrongful act had made it impossible for him to ever again get employment with other railroad companies, are mere conclusions of the pleader from the facts alleged. It should have been averred that he had sought, and been refused, employment by reason of the alleged wrongful act. An agreement made with other railroad companies not to employ defendant's discharged employés does not injure the plaintiff unless carried out. An averment that the defendant conspired and combined with other railroad companies to do an act, if unlawful, would not obviate the necessity of making the averment that he had sought and been refused employment by reason of the alleged wrongful act. Injury is the gist of the action. The liability is damages for doing, not for conspiracy. The charge of conspiracy does not change the nature of the act. In an action for damages, there must be some overt act, consequent upon the agreement to do a wrong, to give the plaintiff a standing in a court of law. Jag. Torts, 638; Cooley, Torts, 279. For the reasons given the judgment sustaining a demurrer to the petition is affirmed.

QUINN *v.* LEATHEM.

IN THE HOUSE OF LORDS, 1901.

[*Reported* 1901 *A. C.* 495.[1]]

LORD LINDLEY. I will pass now to the facts of this case, and consider (1) what the plaintiff's rights were; (2) what the defendants' conduct was; (3) whether that conduct infringed the plaintiff's rights. For the sake of clearness it will be convenient to consider these questions in the first place apart from the statute which legalizes strikes, and in the next place with reference to that statute.

1. As to the plaintiff's rights. He had the ordinary rights of a British subject. He was at liberty to earn his own living in his own way, provided he did not violate some special law prohibiting him from so doing, and provided he did not infringe the rights of other people. This liberty involved liberty to deal with other persons who were willing to deal with him. This liberty is a right recognized by law; its correlative is the general duty of every one not to prevent the free exercise of this liberty, except so far as his own liberty of action may justify him in so doing. But a person's liberty or right to deal with others is nugatory, unless they are at liberty to deal with him if they choose to do so. Any interference with their liberty to deal with him affects him. If such interference is justifiable in point of law, he has no redress. Again, if such interference is wrongful, the only person who can sue in respect of it is, as a rule, the person immediately affected by it; another who suffers by it has usually no redress; the damage to him is too remote, and it would be obviously practically impossible and highly inconvenient to give legal redress to all who suffered from such wrongs. But if the interference is wrongful and is intended to damage a third person, and he is damaged in fact — in other words, if he is wrongfully and intentionally struck at through others, and is thereby damnified — the whole aspect of the case is changed: the wrong done to others reaches him, his rights are infringed although indirectly, and damage to him is not remote or unforeseen, but is the direct consequence of what has been done. Our law, as I understand it, is not so defective as to refuse him a remedy by an action under such circumstances. The cases collected in the old books on actions on the case, and the illustrations given by the late BOWEN, L. J., in his admirable judgment in the *Mogul Steamship*

[1] This case is much abridged. — ED.

201 Kentucky 368
103 Tennessee 199

Company's Case,[1] may be referred to in support of the foregoing conclusion, and I do not understand the decision in *Allen* v. *Flood*[2] to be opposed to it.

If the above reasoning is correct, *Lumley* v. *Gye*[3] was rightly decided, as I am of opinion it clearly was. Further, the principle involved in it cannot be confined to inducements to break contracts of service, nor indeed to inducements to break any contracts. The principle which underlies the decision reaches all wrongful acts done intentionally to damage a particular individual and actually damaging him. *Temperton* v. *Russell*[4] ought to have been decided and may be upheld on this principle. That case was much criticised in *Allen* v. *Flood*,[5] and not without reason; for, according to the judgment of Lord Esher, the defendants' liability depended on motive or intention alone, whether anything wrong was done or not. This went too far, as was pointed out in *Allen* v. *Flood*.[6] But in *Temperton* v. *Russell*[7] there was a wrongful act, namely, conspiracy and unjustifiable interference with Brentano, who dealt with the plaintiff. This wrongful act warranted the decision, which I think was right.

2. I pass on to consider what the defendants did. The appellant and two of the other defendants were the officers of a trade union, and the jury have found that the defendants wrongfully and maliciously induced the customers of the plaintiff to refuse to deal with him, and maliciously conspired to induce them not to deal with him. There were similar findings as to inducing servants of the plaintiff to leave him. What the defendants did was to threaten to call out the union workmen of the plaintiff and of his customers if he would not discharge some non-union men in his employ. In other words, in order to compel the plaintiff to discharge some of his men, the defendants threatened to put the plaintiff and his customers, and persons lawfully working for them, to all the inconvenience they could without using violence. The defendants' conduct was the more reprehensible because the plaintiff offered to pay the fees necessary to enable his non-union men to become members of the defendants' union; but this would not satisfy the defendants. The facts of the case are entirely different from those which this House had to consider in *Allen* v. *Flood*.[8] In the present case there was no dispute between the plaintiff and his men. None of them wanted to leave his employ. Nor was there any dispute between the plaintiff's customers and their own men, nor between the plaintiff and his customers, nor between the men they respectively employed. The defendants called no witnesses, and there was no evidence to justify or excuse the conduct of the defendants. That they acted as they did in furtherance of what they considered the interests of union men may probably be fairly assumed in their favor, although they did not come forward and say so themselves; but that is all that can be said for them. No one can, I

[1] 23 Q. B. D. 613, 614.
[2] [1898] A. C. 1.
[3] 2 E. & B. 216.
[4] [1893] 1 Q. B. 715.
[5] [1898] A. C. 1.
[6] Ib.
[7] [1893] 1 Q. B. 715.
[8] [1898] A. C. 1.

think, say that the verdict was not amply warranted by the evidence. I have purposely said nothing about the black list, as the learned judge who tried the case considered that the evidence did not connect the appellant with that list. But the black list was, in my opinion, a very important feature in the case.

3. The remaining question is whether such conduct infringed the plaintiff's rights so as to give him a cause of action. In my opinion, it plainly did. The defendants were doing a great deal more than exercising their own rights: they were dictating to the plaintiff and his customers and servants what they were to do. The defendants were violating their duty to the plaintiff and his customers and servants, which was to leave them in the undisturbed enjoyment of their liberty of action as already explained. What is the legal justification or excuse for such conduct? None is alleged, and none can be found. This violation of duty by the defendants resulted in damage to the plaintiff — not remote, but immediate and intended. The intention to injure the plaintiff negatives all excuses and disposes of any question of remoteness of damage. Your Lordships have to deal with a case, not of *damnum absque injuria*, but of *damnum cum injuria*.

Every element necessary to give a cause of action on ordinary principles of law is present in this case. As regards authorities, they were all exhaustively examined in the *Mogul Steamship Co.* v. *MacGregor*,[1] and *Allen* v. *Flood*,[2] and it is unnecessary to dwell upon them again. I have examined all those which are important, and I venture to say that there is not a single decision anterior to *Allen* v. *Flood*[3] in favor of the appellant. His sheet-anchor is *Allen* v. *Flood*,[3] which is far from covering this case, and which can only be made to cover it by greatly extending its operation.

It was contended at the bar that if what was done in this case had been done by one person only, his conduct would not have been actionable, and that the fact that what was done was effected by many acting in concert makes no difference. My Lords, one man without others behind him who would obey his orders could not have done what these defendants did. One man exercising the same control over others as these defendants had could have acted as they did, and, if he had done so, I conceive that he would have committed a wrong towards the plaintiff for which the plaintiff could have maintained an action. I am aware that in *Allen* v. *Flood*[4] Lord Herschell[5] expressed his opinion to be that it was immaterial whether Allen said he would call the men out or not. This may have been so in that particular case, as there was evidence that Allen had no power to call out the men, and the men had determined to strike before Allen had anything to do with the matter. But if Lord Herschell meant to say that as a matter of law there is no difference between giving information that men will strike and making them strike, or threatening to make them strike, by calling them out when they do not want to strike, I am un-

[1] [1892] A. C. 25. [2] [1898] A. C. 1. [3] Ib. [4] Ib.
[5] [1898] A. C. at pp. 128, 138.

able to concur with him. It is all very well to talk about peaceable persuasion. It may be that in *Allen* v. *Flood*[1] there was nothing more; but here there was very much more. What may begin as peaceable persuasion may easily become, and in trades union disputes generally does become, peremptory ordering, with threats open or covert of very unpleasant consequences to those who are not persuaded. Calling workmen out involves very serious consequences to such of them as do not obey. Black lists are real instruments of coercion, as every man whose name is on one soon discovers to his cost. A combination not to work is one thing, and is lawful. A combination to prevent others from working by annoying them if they do is a very different thing, and is *prima facie* unlawful. Again, not to work oneself is lawful so long as one keeps off the poor-rates, but to order men not to work when they are willing to work is another thing. A threat to call men out, given by a trade union official to an employer of men belonging to the union and willing to work with him, is a form of coercion, intimidation, molestation, and annoyance to them and to him very difficult to resist, and to say the least, requiring justification. None was offered in this case.

Appeal dismissed.

BOYCOTT ILLEGAL. — *Davenant* v. *Hurdes*, Moore, 576; *Boots Co.* v. *Grundy*, 82 L. T. 769; *S.* v. *Glidden*, 55 Conn. 46; *Jackson* v. *Stanfield*, 137 Ind. 592; *Brender* v. *Miller*, 101 Ky. 368; *S.* v. *Donelson*, 32 N. J. 151; *McCauley* v. *Tierney*, 19 R. I. 255; *Barr* v. *Trades Council*, 53 N. J. Eq. 101; *Olive* v. *Van Dalten*, 7 Tex. Civ. 630; *Bailey* v. *Plumbers' Ass'n*, 103 *Tenn.* 99. — ED.

[1] [1898] A. C. 1.

(2) *Picket.*

STATUTE OF LABORERS, 23 ED. III. ch. 2.

ITEM. If any reaper, mower, or other workman or servant, of what estate or condition that he be, retained in any man's service, do depart the same service without reasonable cause or license, before the term agreed, he shall have pain of imprisonment. And that none under the same pain presume to procure the same or retain any such in his service.

SAMUEL WALKER AND OTHERS *v.* MICHAEL CRONIN.

IN THE SUPREME JUDICIAL COURT, MASSACHUSETTS, OCTOBER, 1871.

[*Reported in* 107 *Massachusetts Reports*, 555.]

WELLS, J.[1] The declaration, in its first count, alleges that the defendant did, "unlawfully and without justifiable cause, molest, obstruct and hinder the plaintiffs from carrying on" their business of manufacture and sale of boots and shoes, "with the unlawful purpose of preventing the plaintiffs from carrying on their said business, and wilfully persuaded and induced a large number of persons who were in the employment of the plaintiffs," and others "who were about to enter into" their employment, "to leave and abandon the employment of the plaintiffs, without their consent and against their will;" whereby the plaintiffs lost the services of said persons, and the profits and advantages they would otherwise have made and received therefrom, and were put to large expenses to procure other suitable workmen, and suffered losses in their said business.

This sets forth sufficiently (1) intentional and wilful acts (2) calculated to cause damage to the plaintiffs in their lawful business, (3) done with the unlawful purpose to cause such damage and loss, without right or justifiable cause on the part of the defendant, (which constitutes malice,) and (4) actual damage and loss resulting.

The general principle is announced in Com. Dig. Action on the Case, A.: "In all cases where a man has a temporal loss or damage by the wrong of another, he may have an action upon the case to be repaired

[1] Only the opinion of the court is given. — ED.

in damages." The intentional causing of such loss to another, without justifiable cause, and with the malicious purpose to inflict it, is of itself a wrong. This proposition seems to be fully sustained by the references in the case of Carew v. Rutherford.[1]

In the case of Keeble v. Hickeringill, as contained in a note to Carrington v. Taylor, both actions being for damages by reason of frightening wild fowl from the plaintiff's decoy, Chief Justice Holt alludes to actions maintained for scandalous words which are actionable only by reason of being injurious to a man in his profession or trade, and adds: "How much more, when the defendant doth an actual and real damage to another when he is in the very act of receiving profit in his employment. Now there are two sorts of acts for doing damage to a man's employment, for which an action lies; the one is in respect of a man's privilege, the other is in respect of his property." After considering injuries to a man's franchise or privilege, he proceeds: "The other is where a violent or malicious act is done to a man's occupation, profession, or way of getting a livelihood; there an action lies in all cases." From the several reports of this case it is not clear whether the action was maintained on the ground that the wild ducks were frightened out of the plaintiff's decoy, as would appear from 3 Salk. 9, and Holt, 14, 17, 18; or upon the broader one, that they were driven away and prevented from resorting there, as the case is stated in 11 Mod. 74, 130. But the doctrine thus enunciated by Lord Holt covers both aspects of the case; as does his illustration of frightening boys from going to school, whereby loss was occasioned to the master. Of like import is the case of Tarleton v. M'Gawley, in which Lord Kenyon held that an action would lie for frightening the natives upon the coast of Africa, and thus preventing them from coming to the plaintiff's vessel to trade, whereby he lost the profits of such trade.

There are indeed many authorities which appear to hold that to constitute an actionable wrong there must be a violation of some definite legal right of the plaintiff. But those are cases, for the most part at least, where the defendants were themselves acting in the lawful exercise of some distinct right, which furnished the defence of a justifiable cause for their acts, except so far as they were in violation of a superior right in another.

Thus every one has an equal right to employ workmen in his business or service; and if, by the exercise of this right in such manner as he may see fit, persons are induced to leave their employment elsewhere, no wrong is done to him whose employment they leave, unless a contract exists by which such other person has a legal right to the further continuance of their services. If such a contract exists, one who knowingly and intentionally procures it to be violated may be held liable for the wrong, although he did it for the purpose of promoting his own business.

One may dig upon his own land for water, or any other purpose,

[1] 106 Mass. 1, 10, 11.

although he thereby cuts off the supply of water from his neighbor's well. Greenleaf *v.* Francis.[1] It is intimated, in this case, that such acts might be actionable if done maliciously. But the rights of the owner of land being absolute therein, and the adjoining proprietor having no legal right to such a supply of water from lands of another, the superior right must prevail. Accordingly it is generally held that no action will lie against one for acts done upon his own land in the exercise of his rights of ownership, whatever the motive, if they merely deprive another of advantages, or cause a loss to him, without violating any legal right; that is, the motive in such cases is immaterial. Frazier *v.* Brown;[2] Chatfield *v.* Wilson; Mahan *v.* Brown; Delhi *v.* Youmans.[3] A similar decision was made in Wheatley *v.* Baugh;[4] but the suggestion in Greenleaf *v.* Francis was approved so far as this, namely, that malicious acts without the justification of any right, that is, acts of a stranger, resulting in like loss or damage, might be actionable; and the case of Parker *v.* Boston & Maine Railroad[5] was referred to as showing that such loss of advantages previously enjoyed, although not of vested legal right, might be a ground of damages recoverable against one who caused the loss without superior right or justifiable cause.

Every one has a right to enjoy the fruits and advantages of his own enterprise, industry, skill and credit. He has no right to be protected against competition; but he has a right to be free from malicious and wanton interference, disturbance or annoyance. If disturbance or loss come as a result of competition, or the exercise of like rights by others, it is *damnum absque injuria*, unless some superior right by contract or otherwise is interfered with. But if it come from the merely wanton or malicious acts of others, without the justification of competition or the service of any interest or lawful purpose, it then stands upon a different footing, and falls within the principle of the authorities first referred to.

It is a well-settled principle, that words, not actionable in themselves as defamatory, will nevertheless subject the party to an action for any special damages that may occur to another thereby. Bac. Ab. Slander, C. The same is true of words spoken in relation to property, or the title thereto, whereby the party is defeated of a sale, or suffers damage in any way. Bac. Ab. Action on the Case, I.; Com. Dig. Action on the Case, C. So also, if, by a wrongful claim of title or lien, the owner is prevented from perfecting a sale, or a purchaser from obtaining delivery to himself of goods, an action will lie. Green *v.* Button.[6]

In all these cases, the damage for which the recovery is had is not the loss of the value of actual contracts by reason of their non-fulfilment, but the loss of advantages, either of property or of personal benefit, which, but for such interference, the plaintiff would have been able to attain or enjoy. Indeed, it has been held that loss by the breach of contract, or the wrongful conduct of another than the defendant, would

[1] 18 Pick. 117. [2] 12 Ohio State, 294. [3] 50 Barb. 316.
[4] 25 Penn. State, 528. [5] 3 Cush. 107. [6] 2 Cr. M. & R. 707.

not be recoverable as damages under a *per quod*. Vicars *v.* Wilcocks ;[1] Morris *v.* Langdale ;[2] Bac. Ab. Slander, C.

This doctrine has been doubted, especially in Lumley *v.* Gye, where the case of Newman *v.* Zachary is cited to the contrary. That was an action on the case, maintained for wrongfully representing to the bailiff of a manor that a sheep was an estray, in consequence of which it was wrongfully seized; the reason for the decision being, "because the defendant, by his false practice, hath created a trouble, disgrace and damage to the plaintiff." But the distinction is unimportant in a case like the present, where the damage to the plaintiffs is alleged to have been the direct result of the wrongful conduct of the defendant, and so intended by him; except that it is significant of the point that the existence and defeat of rights by contract are not essential to the maintenance of an action for malicious wrong, when the defendant has no pretext of justifiable cause.

The case of Green *v.* Button[3] is especially in point in this connection. The defendant, by means of a false claim of a lien, and of words discrediting the plaintiff, induced one who had sold goods to the plaintiff to refuse to deliver them, whereby he was injured in his business. The court, alluding to the doubts that had been expressed as to Vicars *v.* Wilcocks and Morris *v.* Langdale, and without deciding that question, distinguished the case under consideration, on the ground that, the goods not having been paid for, there was no absolute contract to deliver, upon which the plaintiff could have his remedy against the seller; that is, as the delivery was prevented by the wrongful conduct of the defendant, and there was no binding contract broken by the seller, therefore the plaintiff was entitled to recover in his action on the case *per quod*.

In Gunter *v.* Astor,[4] an action was maintained for enticing away workmen from their employment for a piano manufacturer. They were not hired for a limited time, but worked by the piece. The discussion indicates that damages were considered to be recoverable for the breaking up or disturbance of the business of the plaintiff, whereby he suffered the loss of his usual profits for a long period. The grounds of damage were apparently regarded as altogether independent of the mere loss of any contracts with the workmen.

In Benton *v.* Pratt,[5] it is held that proof of loss by the plaintiff of what he would otherwise have obtained, though there was no contract for it which he could enforce, will sustain an action for the wrongful conduct by which the loss was occasioned.

The difficulty in such cases is to make certain, by proof, that there has been in fact such loss as entitles the party to reparation; but that difficulty is not encountered in the present stage of this case, where all the facts alleged are admitted by the demurrer. The demurrer also

[1] 8 East, 1. [2] 2 B. & P. 284. [3] 2 Cr. M. & R. 707.
[4] 4 J. B. Moore, 12. [5] 2 Wend. 385.

admits the absence of any justifiable cause whatever. This decision is made upon the case thus presented, and does not apply to a case of interference by way of friendly advice, honestly given; nor is it in denial of the right of free expression of opinion. We have no occasion now to consider what would constitute justifiable cause.

The second and third counts recite contracts of the plaintiffs with their workmen for the performance of certain work in the manufacture of boots and shoes; and allege that the defendant, well knowing thereof, with the unlawful purpose of hindering and preventing the plaintiffs from carrying on their business, induced said persons to refuse and neglect to perform their contracts, whereby the plaintiffs suffered great damage in their business.

It is a familiar and well-established doctrine of the law upon the relation of master and servant, that one who entices away a servant, or induces him to leave his master, may be held liable in damages therefor, provided there exists a valid contract for continued service, known to the defendant. It has sometimes been supposed that this doctrine sprang from the English Statute of Laborers, and was confined to menial service. But we are satisfied that it is founded upon the legal right derived from the contract, and not merely upon the relation of master and servant; and that it applies to all contracts of employment, if not to contracts of every description.

In Hart *v.* Aldridge, it was applied to a case very much like the present.

In Gunter *v.* Astor,[1] it was applied to the enticing away of workmen not hired for a limited or constant period, but who worked by the piece for a piano manufacturer.

In Sheperd *v.* Wakeman,[2] it was applied to the loss of a contract of marriage by reason of a false and malicious letter claiming a previous engagement.

In Winsmore *v.* Greenbank, the defendant was held liable in damages for unlawfully and unjustly "procuring, enticing and persuading" the plaintiff's wife to remain away from him, whereby he lost the comfort and society of his wife, and the profit and advantage of her fortune.

In Lumley *v.* Gye, the plaintiff had engaged Miss Wagner to sing in his opera, and the defendant knowingly induced her to break her contract and refuse to sing. It was objected that the action would not lie, because her contract was merely executory, and she had never actually entered into the service of the plaintiff; and Coleridge, J., dissented, insisting that the only foundation for such an action was the Statute of Laborers, which did not apply to service of that character; but after full discussion and deliberation it was held that the action would lie for the damages thus caused by the defendant.

In Boston Glass Manufactory *v.* Binney,[3] which was for inducing workmen, skilled in several departments of glass-making, to leave the

[1] 4 J. B. Moore, 12. [2] Sid. 79. [3] 4 Pick. 425.

employment of the plaintiff, it was not suggested that the defendants would not have been liable if there had been an existing contract between the plaintiff and the workmen.

Upon careful consideration of the authorities, as well as of the principles involved, we are of opinion that a legal cause of action is sufficiently stated in each of the three counts of the declaration.

Demurrer overruled.

P. P. SHERRY AND OTHERS *v.* C. E. PERKINS AND ANOTHER.

IN THE SUPREME JUDICIAL COURT OF MASSACHUSETTS, JUNE 19, 1888.

[*Reported in* 147 *Massachusetts Reports*, 212.]

W. ALLEN, J.[1] The case finds that the defendants entered, with others, into a scheme, by threats and intimidation, to prevent persons in the employment of the plaintiffs from continuing in such employment, and to prevent others from entering into such employment; that the banners with their inscriptions were used by the defendants as part of the scheme; and that the plaintiffs were thereby injured in their business and property.

The act of displaying banners with devices, as a means of threats and intimidation to prevent persons from entering into or continuing in the employment of the plaintiffs, was injurious to the plaintiffs, and illegal at common law and by statute. Walker *v.* Cronin. We think that the plaintiffs are not restricted to their remedy by an action at law, but are entitled to relief by injunction. The acts and the injury were continuous. The banners were used more than three months before the filing of the plaintiffs' bill, and continued to be used at the time of the hearing. The injury was to the plaintiffs' business, and adequate remedy could not be given by damages in a suit at law.

The wrong is not, as argued by the defendants' counsel, a libel upon the plaintiffs' business. It is not found that the inscriptions upon the banners were false, nor do they appear to have been in disparagement of the plaintiffs' business. The scheme in pursuance of which the banners were displayed and maintained was to injure the plaintiffs' business, not by defaming it to the public, but by intimidating workmen, so as to deter them from keeping or making engagements with the plaintiffs. The banner was a standing menace to all who were or wished to be in the employment of the plaintiffs, to deter them from entering the plaintiffs' premises. Maintaining it was a continuous unlawful act, injurious to the plaintiffs' business and property, and was a nuisance such

[1] Only the opinion of the court is given. — ED.

L. R. 6 Equity 651

as a court of equity will grant relief against. Gilbert *v.* Mickle;[1] Springhead Spinning Co. *v.* Riley.[2]

Boston Diatite Co. *v.* Florence Manuf. Co.[3] was a case of defamation only. Some of the language in Springhead Spinning Co. *v.* Riley has been criticised, but the decision has not been overruled. See Boston Diatite Co. *v.* Florence Manuf. Co., *ubi supra;* Prudential Assurance Co. *v.* Knott;[4] Saxby *v.* Easterbrook;[5] Thorley's Cattle Food Co. *v.* Massam;[6] Thomas *v.* Williams;[7] Day *v.* Brownrigg;[8] Gaskin *v.* Balls;[9] Hill *v.* Davies:[10] Hermann Loog *v.* Bean.[11]

Decree for the plaintiffs.

REINECKE COAL MINING CO. *v.* WOOD.

IN THE CIRCUIT COURT OF THE UNITED STATES, 1901.

[*Reported* 112 *Fed. Rep.* 477.]

EVANS, District Judge. A great number of affidavits were filed at the hearing, and have been read; and, while much very positive conflict of statement has been found in them, enough appears to warrant the conclusion that, as a direct result of their agreement with the Central City operators and others, the United Mine Workers organization determined to make what is somewhat remarkably called a "striking district" out of that portion of the territory of Hopkins, Christian, and Webster counties where coal mining is carried on, and to force the operators there to yield to their demands by means of the terror inspired by the tactics adopted and tenaciously pursued, of having a large force encamped in the immediate neighborhood of the mines in that territory, and, by the feelings to be thus excited and the terror to be thus inspired, to compel non-union labor employed there to join the United Mine Workers, and thereafter to strike if the Indianapolis scale of prices was not adopted by their employers. There was no strike then or since pending at any of the mines in the Hopkins county district. There appears to have been little or no discontent among the laborers employed there. The scale of prices under which they were working was satisfactory to most, if not all, of them, and to those who employed and paid them. They did not at that time, in any large numbers, appear to desire to join any union, and the subsequent presence of the armed camp could in no

[1] 4 Sandf. Ch. 357. [2] L. R. 6 Eq. 551. [3] 114 Mass. 69.
[4] L. R. 10 Ch. 142. [5] 3 C. P. D. 339. [6] 14 Ch. D. 763.
[7] 14 Ch. D. 864. [8] 10 Ch. D. 294. [9] 13 Ch. D. 324.
[10] 21 Ch. D. 798. [11] 26 Ch. D. 306.

way benefit them. The whole scheme was to benefit another certain class of miners, not resident in that district, and who worked elsewhere, by forcing the operators in the Hopkins county district to do what neither themselves nor their employés desired to do. If we agree that the mine owners in what we may briefly call the "Central City District" were not *particeps criminis* to all the troubles in the Hopkins county district, and responsible equally with their co-contractors for the results of the encampments and of the armed and unlawful operations there, we must nevertheless conclude that their contract with the labor unions, to which we have referred, was the direct cause of the invasion of that district, and the terrorizing attempt made there to put that agreement into effective operation; they in the mean time being exempt alike from similar assaults and from the Indianapolis scale of wages. As before stated, there was little or no discontent in the Hopkins county district. There was no request nor desire, so far as the evidence shows, for the aid of the labor association known as the United Mine Workers. On the contrary, it was undesired and vigorously repelled both by the employers and a vast majority of the employés. Nevertheless, the defendants and those associated with them determined to bring these unwilling persons to the terms the defendants desired to dictate, and, with that sole object in view, organized the armed camp near Madisonville, and one near complainants' mines, and in this way sought to accomplish their own selfish objects at any cost. This, as already intimated, was mostly done before the complainant owned its property, but the object was not accomplished, and the effort was continued in the same way and by the same means until this suit was actually brought. It cannot be that this course was not meant to be an attempt to compel the complainant, by force and intimidation, to yield to the defendants' wishes and demands. The encampment of armed men in the vicinity of the mines was not meant for gentle persuasion or peaceable argument. Peaceable and argumentative persuasion is entirely admissible, but is not accomplished nor intended to be accomplished in that manner. The conduct of the defendants, on the contrary, had all the elements of terror and intimidation; and those elements, being intentionally present, were indubitably designed to compel the complainant to accede to demands it had the lawful right to decline or reject at its option. A court cannot shut its eyes to propositions so palpable. The right to employ whom one wishes, the correlative right to hire to whom one pleases, for wages satisfactory to both, and the right of the same parties to abandon or dissolve the relations thus assumed, are undeniable. The right of each party to strive to obtain the terms most beneficial to himself, and the right of a number of persons similarly situated to unite to accomplish such ends, must be admitted by all. And it follows as a resultant from the latter proposition that individuals having similar interests may by all peaceable and argumentative means persuade others to join with them

in their efforts to do what they fairly consider to be beneficial to themselves as a class, but the safety and preservation of these great and inestimable rights in a free country depend in no small degree upon their recognition and upon their being respected by all persons alike. They are rights which belong to all in common, and not to one class only. The employer and the employé, in whatever business they may be engaged, either in plain merchandising or farming, or in conducting the most extensive manufacturing or other business, must have rights which are equal; and both sides must understand, must respect, and must act upon that principle whenever it applies. When either side to a contention over diverse interests of this character can, by superior force or other means of intimidation, compel the other side to such controversy to yield to its demands, anarchy and oppression have begun, and there is no assurance that in the next encounter the other side may not be the victors, and thus might and force and power, instead of just legal principles, may dictate the standard of right to which all must conform. The only course that is safe for all — the few or the many, the weak or the powerful — is rigorously to require that each party to all such controversies shall recognize the equal rights of all. It is the duty of the courts, upon all proper occasions, to see that this is done, and to apply these principles in all cases that come before them. With this rule as a guide, there is no difficulty in solving the problem presented by the record in this case. The employer and (in the main) the employés in this instance were alike content. They must be presumed to have understood their own condition and needs, and what was best for themselves; and they were not required to subordinate their interests or their wishes to those of miners in distant localities or states, where what might be entirely different conditions would make the Indianapolis scale of wages more equitable and proper for those who desired to adopt it. They had the right to be left free to pursue their own course about matters exclusively of their own concern. The agreement between the laborer and the employer was one which it was the mutual right of both to make, and one which constituted a material and valuable interest in both, and one in which they had the right not to be disturbed by persons who clearly had no right to do so either by force, or by the appearance of force, nor by any threats or other forms of intimidation. This right thus possessed was a valuable property right, — valuable to the laborer, but none the less so to the employer. The intrusion of the defendants, so long as mere peaceful argument and persuasion were used, was in no way violative of the rights of the complainant; but, when that persuasion took the form of the multitudinous camp and the gun and the pistol and the armed force, it passed the bounds of legal right, and entitled the complainant to its lawful remedies against it, quite as much, to say the least, as "picketing," or "besetting," which are held to be a nuisance, and suppressible as such. If picketing may be so treated, then

a fortiori the conduct of the defendants should be prohibited. If this court cannot, in a case like this, protect the rights of a citizen when assailed as those of the complainant have been in this instance, there is a decrepitude in judicial power which would be mortifying to every thoughtful man. It is conceived that there is no such impotency, and there should be no lack of promptness in exercising in the premises all the power the court possesses. Quite true it may be that the exertion of executive power would be more desirable in cases like this, but that abstract proposition in no wise exempts the court from the duty of protecting the rights of the litigant when a proper case is presented. It has not been deemed useful to cite authorities in support of principles so well settled as those upon which the court must proceed in this case, but it may be well to mention the cases of *In re* Debs, 158 U. S. 564, 15 Sup. Ct. 900, 39 L. Ed. 1092, and *Quinn* v. *Leatham*, [1901] App. Cas. 495, as covering the whole ground.

As already intimated, the court has not failed to notice the extreme conflict in the testimony presented by the respective sides, and an attempt to reconcile those conflicts would obviously be unavailing. It may not be inappropriate, however, to say that the statement so positively made in the affidavit of one of the chief officers of the local association of United Mine Workers to the effect that Henry Taylor was murdered in cold blood is so palpably refuted and shown to be so utterly false by the record, and by the court of appeals in its decision in the proceedings which resulted from that unfortunate event, that discredit is thrown upon the equally positive statements made in the other affidavits. A careful consideration of the testimony leaves the court in no doubt that the averments of the bill are substanially true, and, this being so, the motion for the injunction *pendente lite* will be sustained, in order to prevent great and probably irreparable injury. The testimony also leaves upon the mind of the court, as before stated, the pleasurable assurance that the temporary restraining order has been productive of good; and, if this be so, the court should hesitate to do anything to destroy or impair that beneficial result.

The motion for an injunction *pendente lite* according to the prayer of the bill is sustained, and counsel will prepare and submit proper orders to that effect.

VEGELAHN *v.* GUNTNER.

In the Supreme Court of Massachusetts, 1896.

[*Reported* 167 *Mass.* 92.[1]]

Allen, J. The principal question in this case is whether the defendants should be enjoined against maintaining the patrol. The

[1] Opinion only is printed. — Ed.

report shows that, following upon a strike of the plaintiff's workmen, the defendants conspired to prevent him from getting workmen, and thereby to prevent him from carrying on his business, unless and until he should adopt a certain schedule of prices. The means adopted were persuasion and social pressure, threats of personal injury or unlawful harm conveyed to persons employed or seeking employment, and a patrol of two men in front of the plaintiff's factory, maintained from half past six in the morning till half past five in the afternoon, on one of the busiest streets of Boston. The number of men was greater at times, and at times showed some little disposition to stop the plaintiff's door. The patrol proper at times went further than simple advice, not obtruded beyond the point where the other person was willing to listen; and it was found that the patrol would probably be continued, if not enjoined. There was also some evidence of persuasion to break existing contracts.

The patrol was maintained as one of the means of carrying out the defendants' plan, and it was used in combination with social pressure, threats of personal injury or unlawful harm, and persuasion to break existing contracts. It was thus one means of intimidation indirectly to the plaintiff, and directly to persons actually employed, or seeking to be employed, by the plaintiff, and of rendering such employment unpleasant or intolerable to such persons. Such an act is an unlawful interference with the rights both of employer and of employed. An employer has a right to engage all persons who are willing to work for him, at such prices as may be mutually agreed upon; and persons employed or seeking employment have a corresponding right to enter into or remain in the employment of any person or corporation willing to employ them. These rights are secured by the Constitution itself. *Commonwealth* v. *Perry*, 155 Mass. 117; *People* v. *Gillson*, 109 N. Y. 389; *Braceville Coal Co.* v. *People*, 147 Ill. 66, 71; *Ritchie* v. *People*, 155 Ill. 98; *Low* v. *Rees Printing Co.*, 41 Neb. 127. No one can lawfully interfere by force or intimidation to prevent employers or persons employed or wishing to be employed from the exercise of these rights. In Massachusetts, as in some other States, it is even made a criminal offence for one by intimidation or force to prevent or seek to prevent a person from entering into or continuing in the employment of a person or corporation. Pub. Sts. c. 74, § 2. Intimidation is not limited to threats of violence or of physical injury to person or property. It has a broader signification, and there also may be a moral intimidation which is illegal. Patrolling or picketing, under the circumstances stated in the report, has elements of intimidation like those which were found to exist in *Sherry* v. *Perkins*, 147 Mass. 212. It was declared to be unlawful in *Regina* v. *Druitt*, 10 Cox C. C. 592; *Regina* v. *Hibbert*, 13 Cox C. C. 82; and *Regina* v. *Bauld*, 13 Cox C. C. 282. It was assumed to be unlawful in *Trollope* v. *London Building Trades Federation*, 11 T. L. R. 228, though in that case the pickets were withdrawn before the bringing of the bill. The patrol was an unlawful interference both with the plaintiff and with

the workmen, within the principle of many cases, and, when instituted for the purpose of interfering with his business, it became a private nuisance. See *Carew* v. *Rutherford*, 106 Mass. 1; *Walker* v. *Cronin*, 107 Mass. 555; *Barr* v. *Essex Trades Council*, 8 Dick, 101; *Murdock* v. *Walker*, 152 Penn. St. 595; *Wick China Co.* v. *Brown*, 164 Penn. St. 449; *Cœur d'Alene Consolidated & Mining Co.* v. *Miners' Union*, 51 Fed. Rep. 260; *Temperton* v. *Russell*, [1893] 1 Q. B. 715; *Flood* v. *Jackson*, 11 T. L. R. 276; *Wright* v. *Hennessey*, a case before Baron Pollock, 52 Alb. L. J. 104; *Judge* v. *Bennett*, 36 W. R. 103; *Lyons* v. *Wilkins*, [1896] 1 Ch. 811.

HOLMES, J. (dissenting). . . . If it be true that workingmen may combine with a view, among other things, to getting as much as they can for their labor, just as capital may combine with a view to getting the greatest possible return, it must be true that when combined they have the same liberty that combined capital has to support their interests by argument, persuasion, and the bestowal or refusal of those advantages which they otherwise lawfully control. I can remember when many people thought that, apart from violence or breach of contract, strikes were wicked, as organized refusals to work. I suppose that intelligent economists and legislators have given up that notion to-day. I feel pretty confident that they equally will abandon the idea that an organized refusal by workmen of social intercourse with a man who shall enter their antagonist's employ is wrong, if it is dissociated from any threat of violence, and is made for the sole object of prevailing if possible in a contest with their employer about the rate of wages. The fact, that the immediate object of the act by which the benefit to themselves is to be gained is to injure their antagonist, does not necessarily make it unlawful, any more than when a great house lowers the price of certain goods for the purpose, and with the effect, of driving a smaller antagonist from the business. Indeed, the question seems to me to have been decided as long ago as 1842 by the good sense of Chief Justice Shaw in *Commonwealth* v. *Hunt*, 4 Met. 111. I repeat at the end, as I said at the beginning, that this is the point of difference in principle, and the only one, between the interlocutory and the final decree. See *Regina* v. *Shepherd*, 11 Cox C. C. 325; *Connor* v. *Kent*, *Gibson* v. *Lawson*, *Curran* v. *Treleaven*, 17 Cox C. C. 354.

Injunction granted.

FORCE UNFAIR. — *R.* v. *Hibbert*, 13 Cox, C. C. 82; *Springhead Co.* v. *Riley*, L. R. 6 Eq. 551; *Re Debs*, 158 U. S. 564; *U. S.* v. *Kane*, 23 Fed. 248; *Casey* v. *Union*, 45 Fed. 135; *Mining Co.* v. *Miners' Union*, 51 Fed. 260; *Re Phelan*, 54 Fed. 730; *U. S.* v. *Council*, 54 Fed. 994; *Trust Co.* v. *R. R. Co.*, 60 Fed. 803; *Arthur* v. *Oakes*, 63 Fed. 310; *Thomas* v. *R. R.*, 62 Fed. 804; *U. S.* v. *Elliot*, 64 Fed. 27; *Stove Co.* v. *Union*, 72 Fed. 695; *Elder* v. *Whitesides*, 72 Fed. 724; *Mackall* v. *Ratchford*, 82 Fed. 41; *Wire Co.* v. *Wire Union*, 90 Fed. 608; *Steel Co.* v. *Union*, 110 Fed. 698; *Mining Co.* v. *Wood*, 112 Fed. 477; S. *v.* Glidden, 55 Conn. 76; *Glass Mfgrs.* v. *Bottle Blowers*, 59 N. J. Eq. 49; *Vegelahn* v. *Guntner*, 167 Mass. 92; *Murdock* v. *Walker*, 152 Pa. St. 595; *Shoe Co.* v. *Saxley*, 131 Mo. 212; *Reynolds* v. *Everett*, 144 N. Y. 189; *Com.* v. *Crump*, 84 Va. 927. — ED.